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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 92056574 |
| Party | Plaintiff Frank Clegg Leatherworks LLC |
| Correspondence Address | STEVEN WEINBERG HOLMES WEINBERG PC 30765 PACIFIC COAST HIGHWAY, SUITE 411 MALIBU, CA 90265 UNITED STATES msalvatore@holmesweinberg.com, smweinberg@holmesweinberg.com, hwtrademarks@gmail.com, msalvatore@holmesweinberg.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | Nelda Piper |
| Filer's e-mail | hwtrademarks@gmail.com, msalvatore@holmesweinberg.com |
| Signature | /Nelda Piper/ |
| Date | 07/14/2014 |
| Attachments | Opp to Mtn to Compel+Decl+Exs.pdf(1886298 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Reg. No. 3872561

Frank Clegg Leatherworks LLC,

Petitioner,

v.

Cancellation No. 92056574

El Group, LLC,

Respondent.

PETITIONER’S OPPOSITION TO RESPONDENT’S MOTION TO COMPEL

Petitioner Frank Clegg Leatherworks LLC (“Petitioner”) hereby opposes Respondent El Group, LLC’s (“Respondent”) Motion to Compel Attendance of Deposition Witnesses.

This motion is yet another attempt by Respondent to force Petitioner, a small company, to expend unnecessary financial resources in a case that likely will be suspended by the Board. Respondent well knows that it has filed litigation in Massachusetts¹ which has a bearing on the issues in this proceeding and that the Massachusetts court’s decision on those issues will be binding. And Respondent also well knows that Petitioner filed with the Board a Motion to Suspend on April 15, 2014, currently pending, in light of the filing of the Massachusetts litigation. [Dkt. No. 19].

¹ As further discussed in the accompanying Declaration of Michael Salvatore, Respondent filed two lawsuits against Petitioner in Massachusetts Superior Court. The first filed action was removed to federal court by Petitioner, and was immediately voluntarily dismissed by the Plaintiffs, including Respondent. This dismissal was followed by the filing of a second lawsuit by Respondent *et al.* against Petitioner in Massachusetts Superior Court. Petitioner has filed in that case an answer and counterclaim, the latter for trademark infringement and seeking, *inter alia*, cancellation of the registration at issue in this proceeding. Declaration of Michael J. Salvatore (“Salvatore Decl.”), ¶¶ 5-8, Ex. D.

Respondent's underlying intent has now been exposed. Respondent, having previously represented that "too many resources have already been expended on this matter" when Petitioner's new counsel appeared and requested an extension of the discovery period (there having been no discovery prior thereto), then incredibly refused to consent to a suspension of this proceeding after having filed the Massachusetts litigation, and in fact now seeks to compel depositions in this proceeding despite its having filed the Massachusetts litigation. 37 CFR § 2.117(a) and the interests of justice require that Respondent's Motion to Compel be dismissed and that this proceeding be suspended pending disposition of Respondent's recently-filed Massachusetts lawsuit, which will have a bearing on this proceeding.

FACTUAL BACKGROUND

To date, no depositions have taken place in this proceeding. Before Petitioner learned of the first Massachusetts Superior Court action filed against it by Respondent, Petitioner and Respondent noticed depositions of the parties' respective principals in Springfield, MA. Salvatore Decl., ¶ 3, Ex. B. On April 14, 2014, Counsel for Respondent noticed three additional depositions of Petitioner's witnesses in Boston, MA, Springfield, MA, and Providence, RI, respectively. Salvatore Decl., ¶ 4. At the same time that Respondent was noticing these depositions, it was filing the first Massachusetts litigation. Salvatore Decl., ¶ 5. Respondent's counsel never once mentioned that Respondent had filed a lawsuit against Petitioner in Massachusetts Superior Court, which included, *inter alia*, a claim under the Lanham Act, 15 U.S.C § 1114, that the FRANK CLEGG and CLEGG marks as used by Petitioner infringed Respondent's alleged rights in the LOTUFF & CLEGG mark at issue in this proceeding. *Id.*

In the pending Massachusetts litigation, Respondent (and the other Plaintiffs) assert that Petitioner's use of the FRANK CLEGG marks infringe the LOTUFF & CLEGG registration at issue in this proceeding and Petitioner has counterclaimed for trademark infringement under the Lanham Act seeking cancellation of the LOTUFF & CLEGG registration, among other remedies. Salvatore Decl., ¶ 8, Ex. D.

Accordingly, since the issues that will be decided in the pending Massachusetts lawsuit filed by Respondent will have a bearing on the Board's determination in the present matter (and indeed will resolve all of the issues in this proceeding), Petitioner respectfully requests that Respondent's Motion to Compel be denied and that this Cancellation proceeding be suspended pending disposition of the Massachusetts lawsuit, so that the parties can avoid the duplicitous efforts and very significant expense of taking discovery in and litigating the same issues in both cases.

LEGAL ARGUMENT

37 CFR § 2.117(a) provides that: "whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action...which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action." *See General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1936-37 (TTAB 1992); *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011) ("The civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board."). Further, the Board may suspend a proceeding pending the final determination of a civil action between the parties in a state court. *See Mother's Restaurant Inc. v. Mama's Pizza*,

Inc., 723 F.2d 1566, 221 USPQ 394, 395 (Fed. Cir. 1983) (holding that state court findings of prior use and confusing similarity of service marks were preclusive in TTAB cancellation proceeding); *Professional Economics Incorporated v. Professional Economic Services, Inc.*, 205 USPQ 368, 376 (TTAB 1979) (decision of Massachusetts state court, although not binding on the Board, was considered persuasive on the question of likelihood of confusion; however, in light of later decided *Mother's Restaurant* case, would be binding).

The issues in this Cancellation proceeding will be actually litigated and finally determined in the Massachusetts lawsuit under Section 43 of the Lanham Act, 15 U.S.C. § 1125, because the counterclaim filed by Petitioner in that action seeks cancellation of Respondent's LOTUFF & CLEGG registration. Salvatore Decl., ¶ 8, Ex. D. Thus, there can be no doubt that the resolution of that lawsuit will have a bearing on, and in fact will fully decide the issues being litigated in this Cancellation proceeding, namely priority, abandonment and likelihood of confusion. Accordingly, Respondent's Motion to Compel should be denied and this Cancellation proceeding should be suspended pending disposition of the Massachusetts Superior Court action filed by Respondent, so that neither the Board nor the parties have to incur the prejudicial and wasteful costs of duplicating efforts during discovery or otherwise in connection with these litigations.

Respondent will not be prejudiced by a suspension of these proceedings pending determination of the Superior Court lawsuit that it filed. In filing its first civil action, Respondent no doubt foresaw that a suspension of this proceeding would be sought to avoid additional and unnecessary expense; indeed, as Respondent's counsel stated on August 21, 2013: "My clients believe that too many resources have already been expended on this matter." Salvatore Decl., ¶ 2, Ex. A. And in filing the second lawsuit after the motion to suspend had

already been filed by Petitioner, Respondent clearly was aware that the motion to suspend had been filed. The lack of prejudice to Respondent is also shown by the lack of any merit underlying its request to compel discovery; indeed, there is no substantive basis for the request.

Petitioner, on the other hand, would be highly prejudiced if it had to engage in duplicative litigation since its resources are limited and its income depends primarily on Mr. Clegg's being at work and not tied up in litigation. Salvatore Decl., ¶ 9. The only reason Respondent could have for its unfounded crusade to litigate both proceedings simultaneously is to drain Petitioner of its resources while Respondent continues to improperly benefit from Petitioner's CLEGG name and goodwill. Certainly, allowing Respondent to employ such sharp tactics does not serve the interests of justice or judicial economy.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Board deny Respondent's Motion to Compel Deposition Witnesses and suspend the proceedings herein until the civil lawsuit filed by Respondent in Massachusetts Superior Court is resolved.

Dated: July 14, 2014

Respectfully submitted,

HOLMES WEINBERG, PC

/Michael J. Salvatore/

Michael J. Salvatore
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Malibu, CA 90265
Tel: 310.457.6100
Fax: 310.457.9555
Email: msalvatore@holmesweinberg.com

Attorneys for Petitioner, Frank Clegg
Leatherworks LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2014, a true and correct copy of this PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO COMPEL was served by USPS Priority Mail to Respondent's counsel at the below address:

James C. Duda
Bulkley, Richardson and Gelinas, LLP
1500 Main Street, Suite 2700
P.O. Box 15507
Springfield, MA 01115-5507

/Nelda Piper/
Nelda Piper

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Reg. No. 3872561

Frank Clegg Leatherworks LLC,

Petitioner,

v.

El Group, LLC,

Respondent.

Cancellation No. 92056574

DECLARATION OF MICHAEL J. SALVATORE

I, Michael J. Salvatore, hereby declare as follows:

1. I am a counsel of record for Petitioner Frank Clegg Leatherworks LLC (“Petitioner”). I submit this declaration in support of Petitioner’s Opposition to Respondent El Group, LLC’s (“Respondent”) Motion to Compel. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would testify competently thereto.

2. On August 19, 2013, I sent an email to Respondent’s counsel requesting Respondent’s consent for an extension of the discovery period on the ground that my law firm had just substituted into the proceeding five days before the close of discovery and no discovery had yet been conducted. Respondent’s counsel responded two days later with a denial of my request, stating as its reason for the denial that: “My clients believe that too many resources have already been expended on this matter.” Ultimately, the Board granted Petitioner’s Motion to Extend Discovery, which Respondent opposed. Attached hereto as **Exhibit A** is a true and correct copy of the email I sent on April 19, 2013 and the April 21, 2014 response.

3. Attached hereto as **Exhibit B** is a true and correct copy of an email I sent to Respondent’s counsel on April 2, 2014, regarding the scheduling of depositions in this matter.

Since the depositions were noticed for Respondent's counsel's offices in Springfield, MA, and our firm is located in California, I stated in the email that: "the dates of the two depositions will need to be together so that we are not travelling cross country twice." I offered to make our client available on an alternative date in order to accommodate Respondent's principal, Joseph Lotuff's religious holiday. Ultimately, the parties agreed to hold the depositions on April 17-18, 2014, in Springfield, MA.

4. On April 14, 2014, Respondent's counsel sent me copies of three additional deposition notices via email, each pertaining to Petitioner's witnesses. These depositions were noticed for April 23, 24 and 25, 2014, in Providence, RI, Springfield, MA, and Boston, MA, respectively. Respondent's counsel had never mentioned these other depositions when depositions were being scheduled.

5. In the interim, Petitioner became aware of a civil action that was filed against it by Respondent and Respondent's principal, Joseph Lotuff, in Massachusetts Superior Court, Civil Action No. BRCV2014-0354C. This action arose under the Lanham Act, 15 U.S.C. § 1114, and related state claims. The Lanham Act claim involved the same marks and ownership issues as this Cancellation proceeding. Respondent's counsel never mentioned that this lawsuit had been filed during the scheduling of the parties' depositions in the Cancellation proceeding.

6. On May 23, 2014, Petitioner's counsel filed a Notice of Removal of the Massachusetts Superior Court proceeding to the United States District Court, District of Massachusetts. That same day, Respondent filed a Notice of Voluntary Dismissal by all Plaintiffs of the lawsuit in the District Court.

7. On May 27, 2014, Respondent and Respondent's principal, Joseph Lotuff, filed a second civil action against Petitioner in Massachusetts Superior Court, Civil Action No. BRCV2014-0581A. A true and correct copy of the Complaint in this action is attached hereto as **Exhibit C**.

8. On June 27, 2014, Petitioner filed and duly served its answer and counterclaim in the second Massachusetts Superior Court proceeding. Petitioner's counterclaim arises under the

Lanham Act, 15 U.S.C. § 1125, and related state claims. A true and correct copy of the Answer and Counterclaim is attached hereto as **Exhibit D**. The Lanham Act claims involve the same mark and ownership issues as this Cancellation proceeding.

9. Petitioner would be highly prejudiced if it had to engage in duplicative litigation since its resources are limited and its income depends primarily on Mr. Clegg's being at work and not tied up in litigation.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed this 14th day of July, 2014, at Malibu, California.

/Michael J. Salvatore/

Michael J. Salvatore

Exhibit A

From: [Duda, James](#)
To: [Michael J Salvatore](#)
Subject: RE: Cancellation No. 92056574 / Frank Clegg v. El Group, LLC / Request to Extend Discovery
Date: Wednesday, August 21, 2013 7:12:20 AM

Dear Mike,

My clients believe that too many resources have already been expended on this matter, they are frustrated with its progression, and they would like to bring it to a resolution at the earliest possible date. In light of (1) the little chance that extending discovery would lead to the production of additional evidence that would substantially impact the resolution of this matter; (2) the significant costs that the parties likely would incur as a result of any extension; and (3) the more than ample time that has been available for discovery during the past eight months, we see no value to extending the discovery period at this time.

Please note that we also remain concerned by the absence of a good faith response to our offer in February to resolve this matter efficiently through a properly crafted Consent Letter, which we believe should remove the root cause of this litigation by likely removing the LOTUFF & CLEGG registration as an obstacle to your client's efforts to register the FRANK CLEGG and F. CLEGG marks with the U.S. Patent and Trademark Office.

Please call me if you would like to discuss any aspect of this matter.

Thank you.

Jim

James C. Duda, Partner

Bulkley, Richardson and Gelinas, LLP
1500 Main Street, Suite 2700 | P.O. Box 15507 | Springfield, MA 01115-5507
Direct: 413-272-6284 | Fax: 413-272-6806
jduda@bulkley.com | www.bulkley.com

From: Michael J Salvatore [mailto:MSalvatore@holmesweinberg.com]
Sent: Monday, August 19, 2013 3:55 PM
To: Duda, James
Cc: Steven M. Weinberg; Nelda Piper
Subject: Cancellation No. 92056574 / Frank Clegg v. El Group, LLC / Substitution of Attorney

Dear James:

Our firm has just substituted into the above-referenced cancellation proceeding. The attached is being sent to you today via US Mail. We are writing to request a 4-month extension of all pending dates, since no discovery has yet been conducted in this proceeding.

Please let us know if you will agree to the 4-month extension by close of business tomorrow, August 20, 2013.

Thank you very much,

Mike

Michael J. Salvatore

Holmes Weinberg, PC

30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265

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Exhibit B

From: Michael J Salvatore
To: ["Duda, James"](#)
Cc: [Steven M. Weinberg](#); [Nelda Piper](#); [Vincent, Carol](#)
Subject: RE: Frank Clegg Leatherworks LLC v. El Group LLC: Notice of Deposition
Date: Wednesday, April 02, 2014 10:48:18 AM

Hi Jim,

We will need to pick a day for Mr. Lotuff's deposition for which he is available the full 7 hours. Additionally, the dates of the two depositions will need to be together so that we are not travelling cross country twice. If it works for you, we could take Mr. Lotuff's deposition on the 17th, and Mr. Clegg could be available on the 16th. It may be easier to discuss this scheduling over the phone, so please let me know if you would like to set up a time for that.

Thank you,

Mike

Michael J. Salvatore
Holmes Weinberg, PC
30765 Pacific Coast Highway, Ste. 411 | Malibu CA 90265
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From: Duda, James [mailto:jduda@bulkley.com]
Sent: Wednesday, April 02, 2014 10:14 AM
To: Michael J Salvatore
Cc: Steven M. Weinberg; Nelda Piper; Vincent, Carol
Subject: Frank Clegg Leatherworks LLC v. El Group LLC: Notice of Deposition

Hello Mike,

Mr. Lotuff can be available from 9 a.m. to 2 p.m. on Friday, April 18 at our offices for his deposition regarding your client's efforts to cancel the LOTUFF & CLEGG mark in the above captioned matter. That day is the beginning of a religious holiday, and Mr. Lotuff will need to leave by 2 p.m. Please confirm at your earliest convenience that the time frame will work, and also that Mr. Clegg will be available at our offices for his deposition in this matter the day before (that is, April 17) beginning at 10 a.m.

Thank you.

Jim

James C. Duda, Partner

Exhibit C

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION NO.

BRCV2014-0581A

EL GROUP, LLC and JOSEPH LOTUFF

Plaintiffs,

v.

FRANK CLEGG, FRANK CLEGG
LEATHERWORKS, LLC, ANDREW
CLEGG and IAN CLEGG

Defendants.

RECEIVED

Date: May 27, 2014
BRISTOL SUPERIOR COURT

COMPLAINT

INTRODUCTION

1. In this action, EL Group, LLC, which has done business as Lotuff & Clegg and now does business as Lotuff Leather, (the "EL Group"), and Joseph Lotuff (member of EL Group, partner of Lotuff & Clegg, and principal of Lotuff Leather) seek damages and injunctive relief from its former partner, Frank Clegg ("Clegg"), his new company, Frank Clegg Leatherworks, LLC ("FCL"), and Clegg's two sons (and employees), Andrew and Ian Clegg (collectively the "Clegg Defendants"). EL Group's claims arise out of its investment in and development of high-end leather goods, which it actively marketed and sold under the trademark "Lotuff & Clegg." After a significant investment and a two-year commitment to marketing and developing the Lotuff & Clegg name, web-based and retail sales of Lotuff & Clegg products increased substantially. In an effort to usurp the value EL Group created in the Lotuff & Clegg name, Clegg attempted to use the existing good will associated with Lotuff & Clegg for his own

benefit by creating an intentionally confusing, similar brand to market the same goods to the same customers at lower prices. To secure an unfair advantage in the marketplace, Clegg and his sons engaged in a campaign to disparage the Lotuff & Clegg name, and the new Lotuff Leather name, as well as Joseph Lotuff personally, falsely representing to the marketplace and specific retailers that Lotuff & Clegg designs and Lotuff Leather designs were either “stolen” from or “knockoffs” of Clegg’s designs. The EL Group and Joseph Lotuff seek to recover their damages, and a permanent injunction to prevent the immediate and irreparable harm that will result from defendants’ further defamatory statements about Lotuff Leather.

JURISDICTION AND VENUE

2. This action arises under Massachusetts statutory and common law. The Massachusetts Superior Court has jurisdiction over this action pursuant to G.L. c. 223A, §3 and G.L. c. 214, §1. The amount in controversy exceeds \$25,000, exclusive of interest and costs.

3. Bristol County is the proper venue for this action pursuant to G.L. c. 223, §1 because all defendants reside in and have a usual place of business in Bristol County.

PARTIES

4. EL Group LLC (“EL Group”) is a Massachusetts limited liability company with a principal place of business at 44 East Main Street, Carriage House, Ware, Massachusetts. EL Group is an investment company specializing in the identification, funding and operation of manufactured consumer products. EL Group uses sophisticated and unique web-based marketing to create and develop a brand.

5. Joseph Lotuff (“Lotuff”) is a Massachusetts resident with a place of business at 44 East Main Street, Ware, MA 01082. Lotuff is a member of EL Group.

6. Frank Clegg ("Clegg") is, on information and belief, a Massachusetts resident at 999 Hortonville Road, Swansea, Massachusetts 02777-3615, and with a place of business at 1 Ace Street, Fall River, Massachusetts. Clegg is a former partner of EL Group and the managing member of Frank Clegg Leatherworks, LLC.

7. Frank Clegg Leatherworks, LLC ("FCL") is a Massachusetts limited liability company with a principal place of business at 1 Ace Street, Fall River, Massachusetts.

8. Andrew Clegg is, on information and belief, a Massachusetts resident at 999 Hortonville Road, Swansea, Massachusetts 02777-3615, and with a place of business at 1 Ace Street, Fall River, Massachusetts. Andrew Clegg is the son of Frank Clegg, and is on information and belief, employed by FCL.

9. Ian Clegg is, on information and belief, a Massachusetts resident at 999 Hortonville Road, Swansea, Massachusetts 02777-3615, and with a place of business at 1 Ace Street, Fall River, Massachusetts. Ian Clegg is the son of Frank Clegg, and is, on information and belief, employed by FCL.

FACTS AND GENERAL ALLEGATIONS

10. In 2007, Joseph Lotuff, his brother Rick Lotuff (collectively, the "Lotuffs"), and Alden Edmonds ("Edmonds"), all of whom had significant success in textiles, formed EL Group with the intent of identifying potential investment opportunities to manufacture leather goods.

11. Together the Lotuffs and Edmonds developed a concept for a new venture built around a brand identified with a classic, high-quality, durable line of leather products manufactured in the United States and marketed and distributed worldwide primarily via the Internet and social media.

12. To implement the new concept, EL Group identified at least four individuals who had worked with leather, including Clegg, and contacted Clegg in early 2009 regarding a joint venture.

13. While Clegg had previously manufactured and sold leather products out of various workshops in Massachusetts, at the time EL Group contacted Clegg to share the idea that was to become Lotuff & Clegg, he was not producing leather goods and was designing guitars.

14. Although Clegg had no experience marketing or selling products over the Internet, EL Group agreed to partner with Clegg because of his workmanship.

15. With Clegg's competence in leather goods and the EL Group's funding, textile experience, and industry contacts, the partnership was formed. Consistent with the intent to work as a partnership, the Lotuffs and Clegg agreed to combine their two as-yet-unknown names and develop a trademark known as "Lotuff & Clegg."

16. Based upon Lotuffs' industry knowledge and skill and Clegg's craftsmanship, the parties engaged in a series of meetings and collaboratively developed designs and patterns consistent with EL Group's original concept which was targeted for a high-end demographic. These designs and the associated brand-name, Lotuff & Clegg, were developed for and used exclusively by EL Group.

17. To manufacture these newly-designed products, all of which were branded with the distinct mark of "Lotuff & Clegg," the EL Group leased and paid for industrial space, purchased materials, hired labor and consultants, paid for marketing and a website, and paid Clegg for his efforts.

18. Because Clegg was unknown to the public and those in the men's fashion and leather industries, Clegg and EL Group agreed to create a public image of Clegg as a craftsman.

To that end, in collaboration with Clegg, EL Group created and drafted promotional materials designed to build Clegg's presence in the industries, including *inter alia* brochures, videos and other advertising materials designed to characterize Clegg as a well-known craftsman of high-quality leather products (in order that one day he would become so).

19. To create brand-recognition and value associated with the name "Lotuff & Clegg," the EL Group also invested approximately \$600,000 in web-based marketing and purchased space at and attended trade shows.

20. To protect the Lotuff & Clegg mark, on February 18, 2010, EL Group filed for registration of the Lotuff & Clegg mark with the United States Patent and Trademark Office ("USPTO"). Clegg was aware of and consented to the filing of the application for registration, and no information was withheld from him.

21. On November 9, 2010, the USPTO approved the registration.

22. EL Group specifically targeted and developed a network of high-end retail store distributors both domestically and world-wide to sell its products. These retail stores included Shreve, Crump & Low (Massachusetts), Barney's New York (New York), Steven Alan (New York, Connecticut, Boston, Oregon, Illinois, Georgia, Texas and California), and Scoop (California, Florida, and New York).

23. With an established retail distribution network, the EL Group created, paid for and maintained a web-based platform to allow it to sell products directly through the internet.

24. In connection with its marketing and sales efforts, EL Group maintained customer lists. These lists included, *inter alia*, names and contact information for consumer purchasers and buyers for retailers, and information concerning pricing and orders (the "Confidential Information"). This information is not publicly available.

25. By creating an on-line and retail distribution network, developing unique leather goods for a targeted demographic and aggressively advertising the trademark "Lotuff & Clegg," EL Group was able to increase demand and sales of its products significantly.

26. After EL Group expended considerable resources in developing the Lotuff & Clegg brand and products, and Clegg became known in men's fashion and leather industries, Clegg attempted to eliminate his partners and use existing good will associated with the trademark Lotuff & Clegg for his own personal gain by creating a nearly identical brand.

27. Initially, Clegg impacted EL Group's production of leather goods by failing to fill a backlog of orders timely with the specific intent of interfering with EL Group's ability to meet existing demand from clients.

28. Subsequently, in October 2011, Clegg precluded other partners from accessing the manufacturing facility effectively locking them out, stole the Confidential Information, then formed Frank Clegg Leatherworks, LLC, adopted an intentionally similar brand name (Frank Clegg and F. Clegg) and logo, attempted to register those names as trademarks with the U.S. Patent and Trademark Office, and began manufacturing and selling virtually identical leather products.

29. To create additional product confusion, Clegg and FCL created a web-based platform, using the same or similar graphics, pictures, fonts, text descriptions and products, with the specific intent of confusing the public and attempting to divert the existing good will associated with the Lotuff & Clegg trademark to FCL.

30. After launching a website for Frank Clegg Leatherworks, in or around December of 2011, Frank Clegg unfairly and deceptively opened a Twitter account @lotuffandclegg, falsely representing that he was still affiliated with Lotuff & Clegg, and misdirecting customers

and the public to his own website, www.frankcleggleatherworks.com. Among other things, Clegg tweeted the false and misleading statement, "LotuffandClegg is now Frank Clegg Leatherworks frankcleggleatherworks.com."

31. Clegg and FCL systematically engaged in an effort to disparage the Lotuff & Clegg name and products, Joseph Lotuff's reputation, and interfered with EL Group's existing and potential business relationships.

32. In particular, the Clegg Defendants:

- used the Confidential Information stolen from EL Group, targeted almost all of the existing retailers that sold Lotuff & Clegg products, and offered to sell virtually identical goods for a reduced price;
- engaged in a campaign to publicly and privately disparage EL Group, Joseph Lotuff, Lotuff & Clegg, and Lotuff Leather;
- made false, public and private, statements about Joseph Lotuff, Lotuff & Clegg, and/or Lotuff Leather, including, but not limited to, the following:
 - stating that Joseph Lotuff, Lotuff & Clegg, and/or Lotuff Leather stole Clegg's designs;
 - posting a false statement on Twitter representing that a LOTUFF bag for sale at Barneys NEW YORK was a "knock off of Frank Clegg. My dad designed this bag 36 year ago and made this an iconic piece for Cole Haan. This is more like selling fake Kelly or Birkin at your store"
 - retweeting a false statement that "its [sic] a shame all their designs are stolen" referring to "@LotuffLeather."

- tweeting a false statement, “did you know the Lotuff Collection that you sell was designed by my father?”
- tweeting a false statement, “I @ Frank_Clegg . . . designed and made all the bags for Lotuff and Clegg.”
- publishing a false statement that “Lotuff and Clegg is now Frank Clegg Leatherworks.”
- commenting on Facebook, “I just wanted to let you know Lotuffs are copying our bags.”
- tweeting “35 years ago Frank Clegg designed this briefcase. It is now being copied by another company [Lotuff].”
- commenting online, “All Lotuff and Clegg products were made by my team in my workshop.”
- posting on Instagram about a photo of a Lotuff bag, “that one is just a rip off . . . its like buying a fake Rolex might look the same but not even close in quality.”
- commenting on a purseblog.com post about the Lotuff Leather Travel Duffel Bag (on or about March 24, 2014), “I work with Frank and know they didn't Mutually decide to separate. Lotuff was able to work with Frank Clegg, but they used him for all his expertise and designs and went to another factory to steal all designs. You should have done a post on Frank not the bad guys! Never coming on this website again.”

33. By making these false statements accusing Joseph Lotuff, Lotuff & Clegg and Lotuff Leather of dishonesty and theft, the defendants damaged the EL Group's reputation, damaged Joseph Lotuff's reputation, damaged Lotuff & Clegg's brand, damaged Lotuff Leather's brand, and caused members of the public to believe EL Group and Joseph Lotuff had stolen designs from Frank Clegg. See, e.g., comment online @ FlyerTalk Forums, September 4, 2013. ("The rumor mill says the Lotuffs 'stole' the designs from Clegg."). See also, tweet from FECastleberry, September 16, 2013, ("You ARE aware they stole every single one of their designs from @Frank_Clegg, right?"); Online Comment by Ray Gagnon, February 19, 2012, ("I heard the reasons why clegg broke off from the lotuff is because they took his bags to another manufacturing company to be produced and continue to use his designs some people have no Dignity! Shame on them . . ."); and Comment on Facebook dated January 12, 2013, "For those who thrive on copying it and other Clegg's products . . . SHAME ON YOU!"

34. In making these false statements, the Clegg Defendants knew them to be untrue and made such statements to harm EL Group, its products and Joseph Lotuff for their benefit.

35. In recognition of the similarity between the mark used by Clegg and that registered and owned by Lotuff & Clegg, the USPTO rejected Clegg's application to register his marks (Frank Clegg and F. Clegg) claiming that there was a "likelihood of confusion with . . . [Lotuff & Clegg]." Indeed, Clegg concedes that there is confusion between the marks.

36. EL Group continues to maintain the registration of Lotuff & Clegg and to use it in connection with its marketing efforts. Indeed, EL Group has continued to employ the Lotuff & Clegg trademark to identify a single source of high-quality leather products.

37. Despite the USPTO's rejection of the application and the confusion caused, Clegg and FCL continue to use the names Frank Clegg and F. Clegg to sell leather products.
38. The design of leather bags is not capable of intellectual property protection.
39. The design of leather bags is not capable of patent protection because it is not "novel".
40. The design of leather bags is not capable of copyright protection.
41. The design of leather bags is not a trade secret, insofar as the design is open and obvious.
42. Therefore, no one can own the design of a leather bag, or steal such a design.
43. On January 25, 2012, EL Group's lawyers sent a cease and desist letter to Frank Clegg.
44. The letter stated:
- "We represent EL Group, LLC ("EL Group"). On behalf of EL Group, we demand that you to cease and desist from using EL Group confidential and proprietary information that you apparently stole from computers or other databases of EL Group, that you initiate no further communication with customers of EL Group, and that you delete all EL Group information, including customer information, from physical or electronic storage.
- EL Group has received complaints that you are using EL Group email lists. You were never granted permission to use that confidential data for your own purposes.
- ... Please respond to this letter with assurances that your tortious conduct will cease."
45. Clegg and his sons however, did not cease and desist from such tortious conduct.

CAUSES OF ACTION

COUNT I – UNJUST ENRICHMENT

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

46. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 45 of this Complaint as if fully set forth herein.

47. Clegg and FCL has been and will be unjustly enriched by *inter alia* its obtaining of sales, contracts, arrangements, revenues and profits as a result of EL Group's substantial investment in the development and marketing of the Lotuff & Clegg brand and Clegg, individually, and from its use of the Confidential Information.

48. In fact, Clegg did not become known in men's fashion and leather industries until *after* EL Group provided him with significant media exposure and registered the Lotuff & Clegg mark.

49. On information and belief, without EL Group's investment of significant resources to promote the Lotuff & Clegg trademark and marketing of Clegg as a master craftsman, and without Clegg and FCL's use of the Confidential Information, Clegg and FCL would not have a profitable leather goods business or viable international brand.

50. EL Group and Joseph Lotuff have been unjustly injured by Clegg and FCL's wrongful conduct and unjust enrichment in substantial amounts.

51. EL Group is entitled to a complete and accurate accounting from Clegg and FCL so that the total amount of unjust enrichment may be determined and awarded to EL Group at trial.

COUNT II - CONVERSION

(Against Frank Clegg, Frank Clegg Leatherworks LLC)

52. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 51 of this Complaint as if fully set forth herein.

53. EL Group is the owner of the Confidential Information and is entitled to the exclusive possession and use thereof.

54. Clegg and FCL obtained the Confidential Information by unlawful means and have asserted ownership control and rights over the Confidential Information in a manner in consistent with EL Group's exclusive ownership.

55. Clegg and FCL's conduct constitute conversion of the Confidential Information.

56. EL Group has been damaged by Clegg and FCL's conversion of the Confidential Information and is entitled to damages.

**COUNT III – MISAPPROPRIATION OF CONFIDENTIAL AND
PROPRIETARY INFORMATION**

(Against Clegg and Frank Clegg Leatherworks LLC)

57. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 56 of this Complaint as if fully set forth herein.

58. EL Group took reasonable steps to protect the Confidential Information from disclosure, such as maintaining the information electronically with password protection, and keeping its computers within a locked warehouse.

59. Clegg and FCL stole the Confidential Information.

60. Clegg and FCL have actively used and disclosed this Confidential Information without EL Group's express or implied consent.

61. At the time of Clegg and FCL's unauthorized retention, conversion, disclosure and/or use of the Confidential Information, they knew that it was acquired under circumstances giving rise to legal and fiduciary duties to maintain its secrecy and use solely in furtherance of the interests of EL Group, of which Clegg was (or had been) a partner.

62. Clegg and FCL have improperly used the Confidential Information for their economic benefit causing EL Group damage.

**COUNT IV – VIOLATION OF CHAPTER 93, SECTIONS 42 and 42A AND COMMON
LAW MISUSES OF TRADE SECRETS**

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

63. EL Group and Joseph Lotuff repeat and reallege the allegations contained in paragraphs 1 to 62 of this Complaint as if fully set forth herein.

64. The Confidential Information is comprised of and/or contained trade secrets, such as pricing structure, profit and loss information, customer information, etc., which EL Group took reasonable steps to protect from disclosure,

65. Clegg and FCL have improperly obtained and used and continue to improperly keep and use such trade secrets causing EL Group damage.

66. The use of such information by the defendants constitutes a misappropriation of trade secrets and confidential information in violation of common law and G.L. c. 93, §§42 and 42A.

67. EL Group has and will suffer substantial immediate, and irreparable harm and damages unless the defendants are enjoined from using such trade secrets and confidential business information.

68. EL Group is entitled to recover double its damages from Clegg and FCL including costs, interest and attorney's fees.

COUNT V – BREACH OF FIDUCIARY DUTY

(Against Frank Clegg)

69. EL Group and Joseph Lotuff incorporate paragraphs 1 to 68 of the Complaint as if fully set forth herein.

70. Clegg, based upon his position with EL Group, owed a fiduciary to maintain the confidentiality of the Confidential Information.

71. Clegg breached this duty by stealing the Confidential Information and actively using the Confidential Information to compete with EL Group.

72. As a result of the breach of fiduciary duty, EL Group has incurred and continues to incur damages.

COUNT VI- DEFAMATION

(Against Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg)

73. EL Group and Joseph Lotuff incorporate paragraphs 1 to 76 of the Complaint as if fully set forth herein.

74. As detailed above, the Clegg Defendants have published and spoken false and defamatory statements concerning EL Group, Joseph Lotuff, Lotuff & Clegg and Lotuff Leather with knowledge of the falsity of the statements or with reckless disregard for their truth or falsity.

75. By publishing the statements on the worldwide web wide, defendants published defamatory statements to a wide range of persons in the public.

76. The Clegg Defendants' false and defamatory statements prejudiced EL Group in the conduct of its business and deterred others from dealing with it. The Clegg Defendants' statements have a direct tendency to alienate customers and injure EL Group in its business and profession.

77. The Clegg Defendants' false and defamatory statements have caused EL Group damage to its business reputation, economic damage and irreparable harm.

78. The Clegg Defendants' false and defamatory statements, including allegations of dishonesty, about Joseph Lotuff have harmed his personal and business reputation, lost him

business opportunities, and caused him personal injury, including but not limited to mental anguish, embarrassment and humiliation.

COUNT VII – COMMERCIAL AND PERSONAL DISPARAGEMENT

(Against Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg)

79. EL Group and Joseph Lotuff incorporate paragraphs 1 to 82 of the Complaint as if fully set forth herein.

80. As detailed above, the Clegg Defendants published false statements harmful to EL Group's and Joseph Lotuff's reputations and interests, and disparaging of ELG's leather products.

81. The Clegg Defendants intended for publication of the statements to result in harm to the reputations and the interests of EL Group and Joseph Lotuff, having a pecuniary value, or the Clegg Defendants recognized or should have recognized that the statements were likely to do so. The Clegg Defendants knew that the statements were false or acted in reckless disregard of their truth or falsity.

82. The Clegg Defendants' false and injurious statements have caused EL Group and Joseph Lotuff pecuniary damage, harm to its reputation and irreparable harm.

COUNT VIII - INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

83. EL Group and Joseph Lotuff incorporate paragraphs 1 to 86 of the Complaint as if fully set forth herein.

84. EL Group had a contemplated business relationship for economic advantage with Phoenix Leather, and Niche Manufacturing pursuant to which Phoenix Leather, and Niche Manufacturing were to provide EL Group with certain leather goods.

85. Clegg and FCL knew of EL Group's relationship with Phoenix Leather, and Niche Manufacturing.

86. Clegg and FCL interfered with EL Group's prospective economic advantage by convincing Phoenix Leather to stop shipping leather goods to Lotuff Leather upon Frank Clegg's split from Lotuff & Clegg in 2011, and communicated with Niche Manufacturing in February of 2014 that Joseph Lotuff and Lotuff Leather had stolen designs from Clegg and he should not work with Lotuff Leather going forward.

87. EL Group had a contemplated business relationship for economic advantage with IAS Brass Buckles pursuant to which IAS Brass Buckles was to provide EL Group with certain leather goods.

88. Clegg and FCL knew of EL Group's relationship with IAS Brass Buckles.

89. Clegg and FCL interfered with EL Group's prospective economic advantage by convincing IAS Brass Buckles to stop shipping leather goods to Lotuff Leather upon Frank Clegg's split from Lotuff & Clegg in 2011, and communicated with IAS Brass Buckles in February of 2014 that Joseph Lotuff and Lotuff Leather had stolen designs from Clegg and he should not work with Lotuff Leather going forward.

90. Clegg and FCL's interference with EL Group's business relationship was improper in motive or means.

91. As a result, EL Group has incurred and continues to incur damages.

COUNT IX – VIOLATION OF M.G.L. C. 93A, §§ 2, 11

(Against Frank Clegg and Frank Clegg Leatherworks LLC)

92. EL Group and Joseph Lotuff incorporate paragraphs 1 to 95 of the Complaint as if fully set forth herein.

93. At all material times relevant hereto, Clegg and FCL were engaged in the conduct of trade or commerce as defined in M.G.L. c. 93A, §§ 2 and 11.

94. Clegg and FCL have committed unfair and deceptive acts and practices declared unlawful under the provisions of M.G.L. c. 93A, §§ 2 and 11 and the interpretive regulations and case law related thereto. The actions of Clegg and FCL which constitute violations of M.G.L. c. 93A, §§ 2, 11 include, without limitation:

- stealing EL Group's Confidential Information and using such information for their benefit;
- unjustly benefiting from EL Group's substantial investment in developing and marketing the Lotuff & Clegg brand and Clegg, individually, without payment;
- attempting to divert the existing good will associated with Lotuff & Clegg and intentionally infringing on the Lotuff & Clegg trademark for their own benefit by creating an intentionally confusing, similar brand to market the same goods to the same customers at lower prices; and
- intentionally making false and defamatory statements to the public and to those in the leather industry in order to disparage Joseph Lotuff, Lotuff & Clegg products and Lotuff Leather products, interfere with EL Group's contractual relations and prospective economic advantage, and otherwise harm EL Group and Joseph Lotuff.

95. Clegg and FCL's unfair and deceptive conduct occurred primarily and substantially in Massachusetts.

96. As a result of Clegg and FCL's unfair and deceptive conduct, EL Group and Joseph Lotuff have incurred and continue to incur damages.

COUNT X – PRELIMINARY AND PERMANENT INJUNCTION

(Against Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg)

97. EL Group and Joseph Lotuff incorporate paragraphs 1 to 97 of the Complaint as if fully set forth herein.

98. EL Group and Joseph Lotuff are likely to succeed on the merits of its claims.

99. EL Group and Joseph Lotuff have suffered and will continue to suffer irreparable harm if Clegg and FCL (a) are not restrained from using the Frank Clegg and F. Clegg names in connection with the manufacturing and selling of leather goods; (b) are not restrained from using Confidential Information; and (c) are not requested to cease and desist from any disparagement of EL Group or interference of any kind with its customers; vendors, retailers, or potential customers, vendors, or retailers.

100. The harm EL Group will incur if the injunctive relief is not granted substantially outweighs the harm, if any, that the defendants will incur.

RELIEF REQUESTED

WHEREFORE, for the above reasons, EL Group requests the Court:

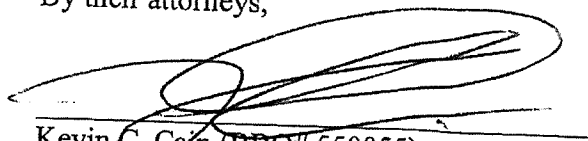
- (a) Pursuant to Count I, enter an order that Clegg and FCL provide an accounting to EL Group and that all of Clegg and FCL's profits since October 2011 be disgorged and paid to EL Group;
- (b) Pursuant to Count II and III, enter judgment against Clegg and FCL in favor of EL Group for the amount of its damages;
- (c) Pursuant to Count IV, enter judgment against Clegg and FCL in favor of EL Group for double the amount of its damages;

- (d) Pursuant to Count V, enter judgment against Clegg in favor of EL Group for the amount of its damages;
- (e) Pursuant to Count VI and VII, enter judgment against all Clegg Defendants in favor of EL Group and Joseph Lotuff for the amount of their damages;
- (f) Pursuant to Count VIII enter judgment against Clegg and FCL in favor of EL Group for the amount of its damages;
- (g) Pursuant to Count IX, enter judgment against Clegg and FCL in an amount no less than double and no more than treble EL Group's and Joseph Lotuff's actual damages, together with attorneys' fees and costs;
- (h) Pursuant to Count X, issue an injunction:
- restraining Clegg and FCL, and each of their agents, servants, successors, assigns, employees, attorneys, all persons acting or purporting to act on its behalf, and all persons having actual notice of any order issued hereunder, from using the Frank Clegg and F. Clegg names in connection with the manufacturing and selling of leather goods and using the Confidential Information;
 - ordering Clegg and FCL to return the Confidential Information; and
 - ordering the Clegg Defendants and each of their agents, servants, successors, assigns, employees, attorneys, all persons acting or purporting to act on its behalf, and all persons having actual notice of any order issued hereunder, to cease and desist from any disparagement of EL Group and Joseph Lotuff or interference of any kind with their customers, vendors, retailers or potential customers, vendors or retailers.

- (i) Award EL Group and Joseph Lotuff their reasonable costs and expenses incurred in this action including, without limitation, their attorneys' fees; and
- (j) Award such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,
The plaintiffs,
EL Group, LLC and JOSEPH LOTUFF,
By their attorneys,



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(781) 320-5461

Dated: May 23, 2014

Exhibit D

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT

CIVIL ACTION NO.
BRCV2014-0581

EL GROUP, LLC and JOSEPH LOTUFF,

Plaintiffs and Counterclaim Defendants

v.

FRANK CLEGG, FRANK CLEGG
LEATHERWORKS, LLC,
ANDREW CLEGG and IAN CLEGG,

Defendants and Counterclaim Plaintiffs.

FRANK CLEGG and FRANK CLEGG
LEATHERWORKS, LLC,

Plaintiffs

v.

FREDERICK A. LOTUFF and
E. ALDEN EDMONDS,

Defendants.

**ANSWER AND COUNTERCLAIM OF DEFENDANTS FRANK CLEGG, FRANK
CLEGG LEATHERWORKS, LLC, ANDREW CLEGG AND IAN CLEGG, AND
COMPLAINT**

Defendants Frank Clegg, Frank Clegg Leatherworks LLC, Andrew Clegg and Ian Clegg (collectively, the “Clegg Parties”) hereby answer the Complaint (“Complaint”) filed by plaintiffs EL Group, LLC and Joseph Lotuff on March 28, 2014, as follows, denying all allegations except to the extent expressly admitted:

INTRODUCTION

1. The Clegg Parties deny the allegations contained in Paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. The Clegg Parties admit that Plaintiffs purport to assert claims under Massachusetts statutory and common law, but except as expressly admitted herein, deny each and every remaining allegation in Paragraph 2 of the Complaint.

3. The Clegg Parties deny the allegations contained in Paragraph 3 of the Complaint.

PARTIES

4. The Clegg Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and therefore deny each and every one of them.

5. The Clegg Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and therefore deny each and every one of them.

6. The Clegg Parties admit that Frank Clegg is a Massachusetts resident with a place of business at 1 Ace Street, Fall River, Massachusetts and is the sole member of Frank Clegg Leatherworks, LLC, but except as expressly admitted herein, deny each and every remaining allegation in Paragraph 6 of the Complaint.

7. The Clegg Parties admit the allegations contained in Paragraph 7 of the Complaint.

8. The Clegg Parties admit that Andrew Clegg is a Massachusetts resident, is the son of Frank Clegg, and is an employee of Frank Clegg Leatherworks, LLC, but except as expressly admitted herein, deny each and every remaining allegation in Paragraph 8 of the Complaint.

9. The Clegg Parties admit that Ian Clegg is a Massachusetts resident, is the son of Frank Clegg, and is an employee of Frank Clegg Leatherworks, LLC, but except as expressly admitted herein, deny each and every remaining allegation in Paragraph 9 of the Complaint.

FACTS AND GENERAL ALLEGATIONS

10. The Clegg Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and therefore deny each and every one of them.

11. The Clegg Parties deny the allegations contained in Paragraph 11 of the Complaint.

12. The Clegg Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and therefore deny each and every one of them.

13. The Clegg Parties deny the allegations contained in Paragraph 13 of the Complaint.

14. The Clegg Parties deny the allegations contained in Paragraph 14 of the Complaint.

15. The Clegg Parties admit that Frank Clegg is competent, is in fact highly skilled in leather craftsmanship, and is known for such skill, but except as expressly admitted herein, deny each and every remaining allegation contained in Paragraph 15 of the Complaint.

16. The Clegg Parties admit that Frank Clegg is competent, is in fact highly skilled in leather craftsmanship and is known for such skill, but except as expressly admitted herein, deny each and every remaining allegation contained in Paragraph 16 of the Complaint.

17. The Clegg Parties deny the allegations contained in Paragraph 17 of the Complaint.

18. The Clegg Parties deny the allegations contained in Paragraph 18 of the Complaint.

19. The Clegg Parties deny the allegations contained in Paragraph 19 of the Complaint.

20. The Clegg Parties admit that on February 18, 2010 EL Group, LLC filed for registration of the Lotuff & Clegg trademark with the United States Patent and Trademark Office

(“USPTO”), but assert that such application was wrongful and in violation of the Clegg Parties’ common-law rights and under the federal Trademark (Lanham) Act. Except as expressly admitted herein, the Clegg Parties otherwise deny the allegations contained in Paragraph 20 of the Complaint.

21. The Clegg Parties admit that on November 19, 2010 the USPTO approved the Lotuff & Clegg registration filed by EL Group, LLC, but assert that such approval was wrongful under the federal Trademark (Lanham) Act and in violation of the Clegg Parties’ common-law and federal registration rights. Except as expressly admitted herein, the Clegg Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore deny each and every one of them.

22. The Clegg Parties deny the allegations contained in Paragraph 22 of the Complaint.

23. The Clegg Parties deny the allegations contained in Paragraph 23 of the Complaint.

24. The Clegg Parties deny the allegations contained in Paragraph 24 of the Complaint.

25. The Clegg Parties deny the allegations contained in Paragraph 25 of the Complaint.

26. The Clegg Parties deny the allegations contained in Paragraph 26 of the Complaint.

27. The Clegg Parties deny the allegations contained in Paragraph 27 of the Complaint.

28. The Clegg Parties admit that Frank Clegg attempted to register the marks FRANK CLEGG and F. CLEGG with the USPTO. Except as expressly admitted herein, the Clegg Parties deny the allegations contained in Paragraph 28 of the Complaint.

29. The Clegg Parties deny the allegations contained in Paragraph 29 of the Complaint.

30. The Clegg Parties deny the allegations contained in Paragraph 30 of the Complaint.

31. The Clegg Parties deny the allegations contained in Paragraph 31 of the Complaint.

32. The Clegg Parties admit that certain of the statements identified in paragraph 32 of the Complaint were made by or with the knowledge of certain of the Clegg Parties. Except as expressly admitted herein, the Clegg Parties deny the allegations contained in Paragraph 32 of the Complaint.

33. The Clegg Parties deny the allegations contained in Paragraph 33 of the Complaint.

34. The Clegg Parties deny the allegations contained in Paragraph 34 of the Complaint.

35. The Clegg Parties admit that the USPTO preliminarily denied the application to register the FRANK CLEGG and F. CLEGG marks because of the improperly obtained Lotuff & Clegg registration filed by EL Group, LLC, but assert that such denial was wrongful and contrary to their common-law and federal registration rights. Except as expressly admitted herein, the Clegg Parties deny the allegations contained in Paragraph 35 of the Complaint.

36. The Clegg Parties deny the allegations contained in Paragraph 36 of the Complaint.

37. The Clegg Parties admit that they continue to use the names FRANK CLEGG and F. CLEGG to sell leather products, as Frank Clegg has done continuously since at least as early as 1976, but except as expressly admitted herein, deny each and every remaining allegation in Paragraph 37 of the Complaint.

38. The Clegg Parties deny the allegations contained in Paragraph 38 of the Complaint.

39. The Clegg Parties deny the allegations contained in Paragraph 39 of the Complaint.

40. The Clegg Parties deny the allegations contained in Paragraph 40 of the Complaint.
41. The Clegg Parties deny the allegations contained in Paragraph 41 of the Complaint.
42. The Clegg Parties deny the allegations contained in Paragraph 42 of the Complaint.
43. The Clegg Parties admit the allegations contained in Paragraph 43 of the Complaint.
44. The Clegg Parties deny the allegations contained in Paragraph 44 of the Complaint and assert that the referenced letter speaks for itself.
45. The Clegg Parties deny the allegations contained in Paragraph 45 of the Complaint.

CAUSES OF ACTION
COUNT I
UNJUST ENRICHMENT

46. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.
47. The Clegg Parties deny the allegations contained in Paragraph 47 of the Complaint.
48. The Clegg Parties deny the allegations contained in Paragraph 48 of the Complaint.
49. The Clegg Parties deny the allegations contained in Paragraph 49 of the Complaint.
50. The Clegg Parties deny the allegations contained in Paragraph 50 of the Complaint.
51. The Clegg Parties deny the allegations contained in Paragraph 51 of the Complaint.

COUNT II
CONVERSION

52. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

53. The Clegg Parties deny the allegations contained in Paragraph 53 of the Complaint.

54. The Clegg Parties deny the allegations contained in Paragraph 54 of the Complaint.

55. The Clegg Parties deny the allegations contained in Paragraph 55 of the Complaint.

56. The Clegg Parties deny the allegations contained in Paragraph 56 of the Complaint.

COUNT III
MISAPPROPRIATION OF CONFIDENTIAL INFORMATION AND PROPRIETARY INFORMATION

57. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

58. The Clegg Parties deny the allegations contained in Paragraph 58 of the Complaint.

59. The Clegg Parties deny the allegations contained in Paragraph 59 of the Complaint.

60. The Clegg Parties deny the allegations contained in Paragraph 60 of the Complaint.

61. The Clegg Parties deny the allegations contained in Paragraph 61 of the Complaint.

62. The Clegg Parties deny the allegations contained in Paragraph 62 of the Complaint.

COUNT IV
VIOLATION OF CHAPTER 93, SECTIONS 42 and 42A AND COMMON LAW
MISUSES OF TRADE SECRETS

63. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

64. The Clegg Parties deny the allegations contained in Paragraph 64 of the Complaint.

65. The Clegg Parties deny the allegations contained in Paragraph 65 of the Complaint.

66. The Clegg Parties deny the allegations contained in Paragraph 66 of the Complaint.

67. The Clegg Parties deny the allegations contained in Paragraph 67 of the Complaint.

68. The Clegg Parties deny the allegations contained in Paragraph 68 of the Complaint.

COUNT V
BREACH OF FIDUCIARY DUTY

69. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

70. The Clegg Parties deny the allegations contained in Paragraph 70 of the Complaint.

71. The Clegg Parties deny the allegations contained in Paragraph 71 of the Complaint.

72. The Clegg Parties deny the allegations contained in Paragraph 72 of the Complaint.

COUNT VI
DEFAMATION

73. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

74. The Clegg Parties deny the allegations contained in Paragraph 74 of the Complaint.

75. The Clegg Parties deny the allegations contained in Paragraph 75 of the Complaint.

76. The Clegg Parties deny the allegations contained in Paragraph 76 of the Complaint.

77. The Clegg Parties deny the allegations contained in Paragraph 77 of the Complaint.

78. The Clegg Parties deny the allegations contained in Paragraph 78 of the Complaint.

COUNT VII
COMMERCIAL AND PERSONAL DISPARAGEMENT

79. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

80. The Clegg Parties deny the allegations contained in Paragraph 80 of the Complaint.

81. The Clegg Parties deny the allegations contained in Paragraph 81 of the Complaint.

82. The Clegg Parties deny the allegations contained in Paragraph 82 of the Complaint.

COUNT VIII
INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

83. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

84. The Clegg Parties deny the allegations contained in Paragraph 84 of the Complaint.

85. The Clegg Parties deny the allegations contained in Paragraph 85 of the Complaint.

86. The Clegg Parties deny the allegations contained in Paragraph 86 of the Complaint.

87. The Clegg Parties deny the allegations contained in Paragraph 87 of the Complaint.

88. The Clegg Parties deny the allegations contained in Paragraph 88 of the Complaint.

89. The Clegg Parties deny the allegations contained in Paragraph 89 of the Complaint.

90. The Clegg Parties deny the allegations contained in Paragraph 90 of the Complaint.

91. The Clegg Parties deny the allegations contained in Paragraph 91 of the Complaint.

COUNT IX
VIOLATION OF MGLC 93A, §§ 2, 11

92. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

93. The Clegg Parties deny the allegations contained in Paragraph 93 of the Complaint.

94. The Clegg Parties deny the allegations contained in Paragraph 94 of the Complaint.

95. The Clegg Parties deny the allegations contained in Paragraph 95 of the Complaint.

96. The Clegg Parties deny the allegations contained in Paragraph 96 of the Complaint.

COUNT X
PRELIMINARY AND PERMANENT INJUNCTION

97. The Clegg Parties restate their responses to the correspondingly numbered paragraphs above.

98. The Clegg Parties deny the allegations contained in Paragraph 98 of the Complaint.

99. The Clegg Parties deny the allegations contained in Paragraph 99 of the Complaint.

100. The Clegg Parties deny the allegations contained in Paragraph 100 of the Complaint.

RELIEF REQUESTED

A. The Clegg Parties deny that Plaintiffs are entitled to an accounting or an award of their profits since 2011;

B. The Clegg Parties deny that Plaintiffs are entitled to judgment and an award of damages;

C. The Clegg Parties deny that Plaintiffs are entitled to judgment and an award of damages;

D. The Clegg Parties deny that Plaintiffs are entitled to judgment and an award of damages;

E. The Clegg Parties deny that Plaintiffs are entitled to judgment and an award of damages;

F. The Clegg Parties deny that Plaintiffs are entitled to judgment and an award of damages;

G. The Clegg Parties deny that Plaintiffs are entitled to judgment and an award of damages, attorneys' fees or costs;

H. The Clegg Parties deny that Plaintiffs are entitled to an injunction;

I. The Clegg Parties deny that Plaintiffs are entitled to their reasonable costs and expenses incurred in this action including, without limitation, their attorneys' fees; and

J. The Clegg Parties deny that Plaintiffs are entitled to any other and further relief.

AFFIRMATIVE DEFENSES

Based on the factual allegations contained in the Complaint, without admitting any wrongful conduct on the part any of the Clegg Parties, without admitting that Plaintiffs suffered or will suffer any loss, damage, or injury, and without assuming any burden of proof that it would not otherwise bear under applicable law, the Clegg Parties assert the following affirmative defenses. By designating the following as affirmative defenses, the Clegg Parties do not in any way waive or limit any defenses which are or may be raised by its denials, allegations, and averments set forth herein. These defenses are pled in the alternative, and are raised to preserve the rights of the Clegg Parties to assert such defenses, and are raised without prejudice to its ability to raise other and further defenses:

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each cause of action therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrines of *in pari delicto* or unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have not suffered any damages from the alleged conduct of the Clegg Parties.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs will be unjustly enriched if allowed to recover any part of the damages they have allegedly suffered or any other remedy they seek from the alleged conduct of the Clegg Parties.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to perform all of their own obligations to Defendants.

SIXTH AFFIRMATIVE DEFENSE

If Plaintiffs have sustained any damages, which the Clegg Parties deny, the Clegg Parties have a right to a setoff of the value of all expenditures and damages due and owing to them.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are frivolous, insubstantial and not advanced in good faith.

* * *

COUNTERCLAIMS AND COMPLAINT

Defendants/Counter-Claimants Frank Clegg and Frank Clegg Leatherworks LLC (together, the "Clegg Parties"), for their counterclaim against Plaintiffs/Counterclaim Defendants EL Group, LLC and Joseph Lotuff, and for their Complaint against Defendants Frederick A. Lotuff and E. Alden Edmonds, allege as follows:

NATURE OF THE ACTION

1. In 2008, Plaintiff/Counterclaim Defendant Joseph Lotuff, on behalf of his company, Plaintiff/Counterclaim Defendant EL Group, LLC (together with Defendants Frederick A. Lotuff and E. Alden Edmonds, the "EL Group Parties") approached Frank Clegg ("Mr. Clegg"), a renowned designer and manufacturer of bespoke leather briefcases and bags, in order to enter a purported business relationship with Mr. Clegg. In connection with the resulting agreement entered into between the parties, Joseph Lotuff offered to use his purported marketing expertise to sell FRANK CLEGG Signature leather products through a website, with profits from the arrangement to be split between Mr. Clegg and Joseph Lotuff/EL Group, LLC, and with the understanding that Mr. Clegg would retain exclusive ownership in all of his designs. When Mr. Clegg became aware that Joseph Lotuff and the other EL Group Parties were engaged in a concerted conspiracy to defraud Mr. Clegg, to steal his well-known name and goodwill, to alter the terms of the agreement between them, and to otherwise interfere with his business relationships, Mr. Clegg terminated his relationship with the EL Group Parties. Subsequently, Frank Clegg Leatherworks LLC, of which Mr. Clegg is the sole member, filed a Cancellation proceeding in the U.S. Patent and Trademark Office Trademark Trial and Appeal Board to

cancel the registration of LOTUFF & CLEGG owned by EL Group, LLC, which consists of Mr. Clegg's name, which Mr. Clegg never gave his consent to register and which was wrongfully registered by the EL Group Parties in derogation of Mr. Clegg's common-law and federal registration rights. During the pendency of the Cancellation proceeding, certain of the EL Group Parties filed this lawsuit in an improper attempt to drain Mr. Clegg's financial resources by forcing him to simultaneously litigate two proceedings relating to the same core issue: the unauthorized use and continued federal registration by the EL Group Parties of Mr. Clegg's valuable name, designs and goodwill. Accordingly, this action seeks cancellation of the LOTUFF & CLEGG registration on the ground, *inter alia*, that it was improperly obtained without Mr. Clegg's consent, and for preliminary and permanent injunctive relief and damages against the EL Group Parties for their unauthorized use and infringement of the CLEGG name, false representations in commerce relating to the design of their competitive leather products, as well as for breach of contract, theft of trade secrets, fraudulent inducement and damage to the Clegg Parties' reputations. The Clegg Parties seek such relief pursuant to the Lanham Act, 15 U.S.C. § 1064, and Massachusetts statutory and common law.

THE PARTIES

2. Frank Clegg is a Massachusetts resident whose place of business is at 1 Ace Street, Fall River, MA 02720. Mr. Clegg is the sole member of Frank Clegg Leatherworks LLC.

3. Frank Clegg Leatherworks LLC ("Frank Clegg Leatherworks") is a Massachusetts limited liability company with a principal place of business at 1 Ace Street, Fall River, MA 02720.

4. Upon information and belief, Plaintiff/Counterclaim Defendant EL Group, LLC ("EL Group") is a Massachusetts limited liability company with a principal place of business at 44 East Main Street, Carriage House, Ware, MA 01082.

5. Upon information and belief, Plaintiff/Counterclaim Defendant Joseph Lotuff is a Massachusetts resident with a place of business at 4 East Main Street, Carriage House, Ware, MA 01082, and is a member of EL Group.

6. Upon information and belief, Defendant Frederick A. Lotuff is a Massachusetts resident with a place of business at 4 East Main Street, Carriage House, Ware, MA 01082, and is a member of EL Group.

7. Upon information and belief, Defendant E. Alden Edmonds is a Massachusetts resident with a place of business at 4 East Main Street, Carriage House, Ware, MA 01082, and is a member of EL Group.

JURISDICTION AND VENUE

8. This action arises under Massachusetts statutory and common law and the Lanham Act, 15 U.S.C. § 1051, *et seq.* This Court has jurisdiction over the Massachusetts statutory and common law claims brought in this action pursuant to G.L. c. 223A, § 3 and G.L. c. 214, § 1. This Court has concurrent jurisdiction over the Lanham Act claim brought in this action pursuant to 15 U.S.C. § 1121. The amount in controversy in this action exceeds \$25,000, exclusive of interests and costs.

9. Bristol County is the proper venue for this action pursuant to G.L. c. 223, § 1, because all defendants reside or have a usual place of business in Bristol County.

FACTUAL ALLEGATIONS

Thirty-Five-Plus-Year History of Frank Clegg's Custom Leather Business

10. Frank Clegg Leatherworks, and its sole member, Mr. Clegg, are the exclusive owners in the United States of common law rights in the marks FRANK CLEGG, F. CLEGG and FRANK CLEGG LEATHERWORKS for briefcases, bags and related leather goods, and Frank Clegg Leatherworks owns United States Patent and Trademark Office (“USPTO”) applications for the marks FRANK CLEGG and F. CLEGG for “Backpacks; Briefcases; Business card cases; Coin purses; Document cases; Duffle bags; Handbags; Leather bags and wallets; Leather purses; Luggage tags; Messenger bags; Tote bags; Wallets” in International Class 018, USPTO App. Serial Nos. 85/677,529 and 85/677,632, respectively (collectively, the “FRANK CLEGG Marks”).

11. Mr. Clegg (and since its formation in 2012, Frank Clegg Leatherworks) has used the FRANK CLEGG Marks in the United States since at least as early as 1976. For more than thirty-five years, Mr. Clegg has produced, marketed, promoted, distributed and sold handmade designer leather briefcases, bags and related goods in interstate commerce under the FRANK CLEGG Marks.

12. Accordingly, the FRANK CLEGG Marks have been well-known in the leather goods industry for over thirty-five years due to Mr. Clegg's consistent marketing and sale of leather goods under the FRANK CLEGG Marks in interstate commerce, and because of the high quality of Mr. Clegg's products and workmanship. Due to the high quality of the design and craftsmanship associated with the leather goods sold under the FRANK CLEGG Marks, Mr. Clegg is also widely known and well-respected by his peers and others in the leather industry. In the leather industry, the names FRANK CLEGG and CLEGG are exclusively associated with Frank Clegg Leatherworks, and its sole member, Mr. Clegg.

13. Mr. Clegg has always protected his ideas, designs, patterns, manufacturing process, suppliers, components, industry contacts and customer lists as his trade secrets and confidential information, disclosing this information only to those employees with a need to know such information, and always with the understanding that Mr. Clegg was the exclusive owner of such trade secrets and confidential information.

14. From the 1970s to the mid-1990s, Mr. Clegg regularly published catalogs of leather products bearing the FRANK CLEGG Marks, and sold these products directly to his loyal customers, as well as through hundreds of retail accounts throughout the United States, most of which were high-end leather goods and luggage stores.

15. In addition to the numerous retail accounts that sold FRANK CLEGG leather goods, in the mid-1990s Mr. Clegg began selling certain of his FRANK CLEGG leather bags, including the English Briefcase and Zip-Top Briefcase, through a website called www.charlotteswebsite.com, and continued to do so for approximately one year. For many years

beginning in or about the late 1990's, Mr. Clegg also sold his leather goods directly to consumers on eBay.

16. In addition to Mr. Clegg's sales of FRANK CLEGG-branded leather products directly to customers, on-line and through various leather goods and luggage stores, in the late-1990s, Mr. Clegg entered into a business relationship with Cole Haan. Part of Mr. Clegg's agreement with Cole Haan called for Mr. Clegg to design and manufacture forty-seven different leather bags, briefcases and other products for Cole Haan, which were then sold to consumers under the COLE HAAN mark. This arrangement with Cole Haan lasted for a period of approximately seven years, until Cole Haan was ultimately purchased by Nike, Inc.

17. Some of the products produced by Mr. Clegg for Cole Haan included Mr. Clegg's English Briefcase, Lock Briefcase and Zip-Top Briefcase designs, two different versions of Mr. Clegg's duffel bag designs, Palm Pilot cases, planner cases, tie cases, computer bags, legal pad cases, portfolios and other products, all of which were designed and built by Mr. Clegg.

18. Upon the conclusion of Mr. Clegg's long and successful relationship with Cole Haan, neither Cole Haan nor Nike continued to produce any of the products Mr. Clegg designed during the relationship, as it is customary in the leather goods industry not to utilize designs that are substantially identical to those of another person or entity without having express permission to do so.

19. Over the years, Mr. Clegg performed similar leather product design and manufacturing services for Alden Shoe Company, Lap Sack, Sebago and many other smaller leather companies, and accordingly Mr. Clegg became well-known in the leather industry for his design and prototype development services and the artisanal manufacturing of leather goods. Notably, none of Mr. Clegg's business partners ever continued to produce Frank Clegg-designed products after the termination of their relationship with Mr. Clegg, without Mr. Clegg's consent, or without paying compensation to Mr. Clegg for the use of his renowned designs.

20. While Mr. Clegg performed such prototype, design and manufacturing services for many leather companies over the years, Mr. Clegg at all times since the inception of his

business in the 1970s, also continuously manufactured and sold leather products directly to his loyal customers under the FRANK CLEGG Marks.

Mr. Clegg is Approached by Morgan Grays

21. In late 2007, Mr. Clegg was approached by Stuart Grays, a businessman involved in the leather industry who represented to Mr. Clegg that Ben Liberty, a well-known designer in New York, recommended Mr. Clegg as a premier leather craftsman and designer. Mr. Grays was interested in working with Mr. Clegg so that Mr. Clegg could modify Mr. Grays' designs as well as design and license certain products to Mr. Grays' company, Morgan Grays, in order to make that company's product line more unique and appealing. Mr. Grays told Mr. Clegg that he had just sold part of Morgan Grays to Joseph Lotuff, who Mr. Grays represented was desperate to get into the leather goods industry, and who might be interested in purchasing a share of Mr. Clegg's business. Mr. Clegg told Mr. Grays that he was not interested in selling a share of his business.

22. Despite Mr. Clegg's rebuke, Mr. Grays and Joseph Lotuff continued to court Mr. Clegg. In 2008, Mr. Clegg finally agreed to design a single leather product to be sold by Morgan Grays: a legal box case that Mr. Grays and Joseph Lotuff represented no one else was capable of creating for them.

23. Mr. Clegg subsequently built a small run of legal box cases for Morgan Grays, but by the time Mr. Clegg finished manufacturing these products, Morgan Grays was out of business.

24. After Morgan Grays went out of business, Joseph Lotuff continued to visit Mr. Clegg repeatedly throughout 2009, each time expressing his desire to work with Mr. Clegg. Joseph Lotuff ultimately told Mr. Clegg that there was no one else that he wished to work with to create a brand of leather goods, or who possessed Mr. Clegg's level of design skill and craftsmanship.

25. During this time period, Mr. Clegg told Joseph Lotuff that he was working with a leather supplier with whom Mr. Clegg had a twenty year business relationship, for the purpose of

building up a substantial supply of leather that Mr. Clegg intended to use to build a leather collection for sale directly to consumers through a website, now that the internet could support a robust e-commerce business. Mr. Clegg was thus not interested in a relationship with Joseph Lotuff, who had no experience in the leather industry.

Mr. Clegg Reluctantly Agrees to Sell His Products On-line, with the EL Group Parties.

26. In early 2009, Joseph Lotuff continued his pursuit of Mr. Clegg, and Mr. Clegg and Joseph Lotuff discussed a potential business venture selling Mr. Clegg's custom leather products on-line. Mr. Lotuff told Mr. Clegg that if they agreed to go into business together, Mr. Clegg would receive 70% of the profit from the on-line sale of his products for designing and manufacturing the products, and Mr. Lotuff would receive 30% of the profits for administering the website.

27. Subsequent to the discussion described in the preceding paragraph, Joseph Lotuff brought his brother, Frederick A. Lotuff (together, the "Lotuffs"), to meet Mr. Clegg. At this meeting, Frederick Lotuff repeated to Mr. Clegg exactly what Mr. Clegg had previously told Joseph Lotuff was his business plan, *i.e.*, to market and sell Mr. Clegg's new collection of leather products directly to consumers over the internet.

28. During this meeting, the Lotuffs represented to Mr. Clegg that the manufacturer that they were currently working with did not have the ability to design products, and that the Lotuffs otherwise did not have any product designs or seemingly any other expertise at marketing or selling leather products. The Lotuffs further represented to Mr. Clegg that this was why they desired to work with Mr. Clegg, who was familiar with every aspect of designing, manufacturing, marketing and selling bespoke leather products. This statement, as shown below, was knowingly false when made, as the Lotuffs actually intended to steal Mr. Clegg's products, designs and expertise and use them to develop their own brand for their own benefit and to Mr. Clegg's detriment.

29. The Lotuffs promised to utilize their purported marketing expertise and also to invest money to help Mr. Clegg in his business and to design and build a website to sell Mr.

Clegg's products. Joseph Lotuff, on behalf of EL Group, offered to split the profits with Mr. Clegg from sales of FRANK CLEGG signature leather products that were to be sold exclusively through the website, with the profits from such sales to be shared as previously discussed between Mr. Clegg and Joseph Lotuff, *i.e.*, 70% to Mr. Clegg and 30% to the Lotuffs. Joseph Lotuff represented that this was the same profit-sharing arrangement they had during their short-lived business relationship with Morgan Grays, and that their purported marketing expertise would result in significant sales of Mr. Clegg's products on the website.

30. Mr. Clegg accepted this offer for FRANK CLEGG signature products to be sold through the website, which the Lotuffs agreed to build and maintain, on the conditions that Mr. Clegg would retain ownership of all designs, patterns and templates for all products sold via the website, and that Mr. Clegg would be the exclusive manufacturer of all such products. Mr. Clegg agreed not to charge for any design and prototype development, and further agreed to only charge a discounted labor rate for the manufacture of products to be sold via the website, so that the website could reach profitability more quickly.

31. An additional material term of the above-described agreement was that the Lotuffs, on behalf of EL Group, promised to purchase significant amounts of leather and other raw materials necessary for Mr. Clegg to build the initial run of products to be sold on the website (it was understood that once the website reached profitability, subsequent material would be provided by Mr. Clegg, hence his larger share of the profits). In exchange, Mr. Clegg agreed to devote his entire operation exclusively to designing and building FRANK CLEGG signature leather products for sale on the website.

32. With this agreement in place, Mr. Clegg manufactured a thirty-piece collection of his best-selling leather designs, including the English Briefcase and Zip-Top Briefcase within a few months, and in so doing contributed approximately \$2 million worth of design services without compensation, with the intent this would allow the website to reach profitability more quickly.

33. Unknown to Mr. Clegg was that the EL Group Parties never intended to live up to the terms of the agreement described above, and thus knowingly made false statements of material fact to Mr. Clegg, upon which Mr. Clegg relied.

34. Indeed, the EL Group Parties never purchased significant amounts of leather or other raw materials, despite Mr. Clegg repeatedly stating to the Lotuffs that it would be necessary to do so in order to build up the requisite amount of inventory to meet potential demand or manufacture products efficiently.

35. Also unknown to Mr. Clegg at this time, the Lotuffs had a third partner, E. Alden Edmonds, and were purporting to be entering into the above-described agreement on behalf of EL Group. As such, at all relevant times, and unknown to Mr. Clegg at the time, the Lotuff's dealings with Mr. Clegg were on behalf of EL Group.

36. Also unknown to Mr. Clegg at this time was that the representations made by the Lotuffs referenced above were knowingly false when made and were made with the intent of having Mr. Clegg rely upon them. Contrary to their stated intentions, the Lotuffs (and with Mr. Edmonds, EL Group) were conspiring to defraud Mr. Clegg and to steal Mr. Clegg's designs, business and his valuable name for their own benefit.

37. At the outset of the website business, Joseph Lotuff expressed his desire to design leather bags with Mr. Clegg, which Mr. Clegg entertained on one occasion. However, the bag that resulted from this one-time design collaboration between Mr. Clegg and Joseph Lotuff did not result in a product that was of the same quality or caliber as Mr. Clegg's signature designs. Accordingly, it was agreed that this bag would never be produced for sale.

38. Shortly thereafter, Mr. Clegg offered to sell on the website a unique bag design that he had once built for a previous account: a large briefcase that could also be used to store clothing while travelling, which was called the Signature Carry All. When this bag was built by Mr. Clegg, it was very well-received by the Lotuffs, and the Lotuffs subsequently agreed that Mr. Clegg, due to his decades of experience and high skill level, would be solely responsible for the design and manufacturing of all products that would be sold on the website.

39. At or around this time, Mr. Clegg told Frederick Lotuff that if the business arrangement did not work out, Mr. Clegg would preserve all property that Mr. Clegg had contributed to the venture. Frederick Lotuff told Mr. Clegg that this condition would be honored, and that if the Lotuffs ever stopped working with Mr. Clegg, they would not want or use Mr. Clegg's designs any longer. Frederick Lotuff not only knew that this statement to Mr. Clegg was false when it was made, but he intended this statement to induce Mr. Clegg to continue to share his name, products, designs and expertise with the Lotuffs.

40. The thirty-piece collection of FRANK CLEGG signature bags that Mr. Clegg designed and manufactured for sale on the website included many of Mr. Clegg's best-selling leather designs such as his English Briefcase, Lock briefcase, Zip-Top Briefcase and several of Mr. Clegg's classic duffel and tote bag designs. The only products that were designed for sale through the website that had not been previously sold by Mr. Clegg were the iPad case and iPad sleeve (both of which were also designed by Mr. Clegg exclusively). Otherwise, Mr. Clegg had previously manufactured and designed all products for sale on the website under the FRANK CLEGG Marks and the marks of various licensees, including Cole Haan, for decades.

The EL Group Parties Change the Terms of and Breach the Parties' Agreement

41. When Mr. Clegg was putting the finishing touches on the collection of products that was to be sold through the website, the Lotuffs revealed that they intended the products to be sold under the name LOTUFF & CLEGG, rather than under the FRANK CLEGG Signature mark as they had previously represented and as was agreed, and that the website address would be www.lotuffclegg.com. Mr. Clegg did not agree with this course of action and expressed his disapproval to the Lotuffs.

42. While Mr. Clegg ultimately decided to allow the use of the LOTUFF & CLEGG name in the spirit of comity, and in the hope that the website would support a sustainable level of business, at no point did Mr. Clegg ever grant anyone his consent to register the LOTUFF & CLEGG name as a trademark.

43. Around this time, the Lotuffs for the first time introduced Mr. Clegg to their third partner, Mr. Edmonds, who the Lotuffs said would also be involved in the website business. This was also the first time Mr. Clegg was made aware of the existence of EL Group, which the Lotuffs and Mr. Edmonds represented was an “investment company.” Upon receiving this information, Mr. Clegg immediately expressed his disapproval of involving Mr. Edmonds or EL Group in the venture.

44. Sales on the www.lotuffclegg.com website during its first year of operation were minimal, and because Mr. Clegg’s agreement with the EL Group Parties precluded him from taking other work and the EL Group Parties failed to support Mr. Clegg’s manufacturing capabilities, the Clegg Parties suffered significant lost profits. In fact, the EL Group Parties’ actions led to Mr. Clegg’s business not being profitable for the first time and Mr. Clegg was forced to lay off an employee for the first time ever.

45. In an effort to increase business to the website, Mr. Clegg suggested that the group attend a trade show so that the industry would become aware of the collection Mr. Clegg had produced for the website. As such, in or around February 2011, the Lotuffs and Mr. Clegg attended a men’s trade show in New York City, where the collection of leather bags Mr. Clegg designed and built for the LOTUFF & CLEGG website received immediate and substantial attention from those in attendance, many of whom represented that it was the finest collection of men’s leather goods they had ever seen.

46. During this trade show, the Lotuffs were able to observe first-hand Mr. Clegg’s marketing expertise and interaction with customers, and Mr. Clegg’s presentation regarding the design, construction and functionality of the products resulted in numerous sales. However, at this trade show Mr. Clegg overheard Joseph Lotuff falsely representing to one visitor to the LOTUFF & CLEGG booth that a “design team” was responsible for the collection, rather than crediting Mr. Clegg for his work on the designs. Upon information and belief, this was neither the first nor last time that the EL Group Parties falsely represented to third parties the origin of Mr. Clegg’s products and those sold on the parties’ website.

47. Upon information and belief, the EL Group Parties were able to secure numerous retail placements for the LOTUFF & CLEGG products, including a retail account at Barney's New York, as a direct result of Mr. Clegg's design and manufacturing expertise and the resulting positive response to the collection from those attending the New York trade show. Mr. Clegg understood that the same profit sharing arrangement (70% to Mr. Clegg, 30% to the EL Group Parties) would apply to any sales to retail accounts.

48. In truth, however, these retail accounts were pursued by the EL Group Parties for their sole benefit, and to the detriment of the Clegg Parties. Whenever Mr. Clegg asked to review the retail account orders, he was told by Frederick Lotuff that the venture's finances were none of Mr. Clegg's concern. The details of the retail accounts or sales thereto were concealed from the Clegg Parties by the EL Group Parties, and this became a subject of consistent disagreement between Mr. Clegg and the EL Group Parties. The Clegg Parties have never shared in any profits derived from the sales of Mr. Clegg's products by the EL Group Parties to retail accounts, and have never been compensated for providing the design and manufacturing expertise that made such products and sales possible.

49. With the increased exposure from attending the New York trade show, sales to the LOTUFF & CLEGG website increased, causing Mr. Clegg to once again attempt to ramp up production in order to meet demand.

50. At the same time, Frederick Lotuff began to spend a significant amount of time at Mr. Clegg's manufacturing facility, where he consistently interrupted Mr. Clegg's manufacturing to insist that Mr. Clegg create small batches of random products that Mr. Lotuff falsely represented were to be used for marketing purposes. These interruptions created an environment in Mr. Clegg's manufacturing facility where it became impossible to meet the demand of incoming orders.

51. Upon information and belief, Frederick Lotuff was causing Mr. Clegg to interrupt manufacturing and to incur the expense of creating small runs of leather goods so that the EL Group Parties could have the products reverse-engineered and manufactured more cheaply at

another facility, while only paying Mr. Clegg the cost of discounted wholesale labor to create a prototype, as opposed to the cost for Mr. Clegg's development of the designs, prototypes, patterns and manufacturing techniques used to create these goods—all of which are costs that would normally be paid by a licensee of Mr. Clegg's designs and patterns.

52. Additionally, EL Group Parties, under the false pretense that such information would be used for marketing purposes and to increase sales on the www.lotuffclegg.com website, wrongly and in bad faith convinced Mr. Clegg to reveal to them highly valuable trade secrets and confidential information that Mr. Clegg had acquired over his thirty-plus years of designing and manufacturing products in the leather industry, including how and where to purchase leather efficiently, how to ensure that leather is of the highest quality, how to use an entire hide to maximize production, how to use scraps of leather to make items which sell for hundreds of dollars, how to properly finish edges, and how to use certain types of glues, threads, hardware and manufacturing techniques to create durable bespoke leather goods. All of this information is confidential and proprietary trade secret information belonging to Mr. Clegg, that Mr. Clegg would not have revealed to the EL Group Parties but for the EL Group Parties' intentionally false and misleading statements to Mr. Clegg.

53. Further, the Lotuffs were observed writing down codes of various raw materials, including thread colors, edge dyes, and hardware, photocopying Mr. Clegg's original design drawings and removing confidential supplier information and customer lists (all of which information was confidential and proprietary to Mr. Clegg) from Mr. Clegg's manufacturing facility, all in furtherance of the EL Group Parties' wrongful efforts to defraud Mr. Clegg and to steal his valuable design and manufacturing expertise and use such proprietary knowledge for their own benefit and to the Clegg Parties' detriment.

54. Also during this time, the Clegg Parties learned that the EL Group Parties had, without permission and for no legitimate purpose, secretly removed from Mr. Clegg's manufacturing facility several patterns and products that were in inventory, again for the purpose of converting these valuable designs, products and patterns to their own use.

55. Upon information and belief, these trade secrets and confidential information continue to unjustly enrich the EL Group Parties today, at the expense of the Clegg Parties.

56. The Clegg Parties further learned that at or around the same time, orders were being deleted from Mr. Clegg's computer system by the EL Group Parties, but were still being shipped out to customers for the exclusive benefit of the EL Group Parties.

57. During this time, Joseph Lotuff approached Mr. Clegg and said that he wanted to enter into a formal written agreement regarding the business venture between Mr. Clegg and EL Group LLC. Joseph Lotuff stated to Mr. Clegg that because there were three partners of EL Group LLC, that the agreed upon profit split from the website should be reversed, with 70% now going to the EL Group Parties and 30% to Mr. Clegg. Mr. Clegg would not agree to this modified arrangement and insisted that the profit sharing arrangement from the website business be left as originally agreed to, namely, 70% of profits to Mr. Clegg and 30% of profits to the EL Group Parties.

58. From the time Joseph Lotuff attempted to alter the agreement, which Mr. Clegg had performed and relied upon, Mr. Clegg and the EL Group Parties consistently argued over how the profits should be split, with the EL Group Parties insisting on the proposed revised profit sharing arrangement as set forth above. At no point did Mr. Clegg ever agree to a revised profit sharing arrangement, and at no point was any written agreement ever entered into between Mr. Clegg and any of the EL Group Parties that modified their prior oral agreement (or otherwise).

59. Having become highly skeptical of the EL Group Parties' business ethics and true intentions for the website business, Mr. Clegg began regularly requesting a copy of the website business's balance sheet. For many months, the EL Group Parties ignored Mr. Clegg's requests in this regard.

60. When Mr. Clegg was finally provided with a balance sheet, he was surprised and upset to find that the document referenced over three hundred thousand dollars (\$300,000.00) in so-called market research and photography costs that had been charged against the venture,

without Mr. Clegg's knowledge or consent. Mr. Clegg immediately objected to these alleged costs being deducted from the website business's profits because the EL Group Parties previously had represented to Mr. Clegg that these matters were being handled "in house."

61. Mr. Clegg further discovered that these "market research" and "photography" expenditures were actually unnecessary and wasteful expenditures used for parties, travel and other entertainment for the EL Group Parties and their friends.

62. On information and belief, these marketing expenditures represent nothing more than the EL Group Parties charging personal entertainment and travel expenses for themselves and their personal friends against the profits of the website business in a wrongful, bad faith attempt to pass the costs of these excesses on to Mr. Clegg, who had been systematically shut out of any involvement in the website's finances, despite his repeated inquiries and expressions of concern into the same.

63. The significant purported "marketing" costs incurred by the EL Group Parties without Mr. Clegg's knowledge or consent resulted in significant lost profits to the website and accordingly to Mr. Clegg, such that Mr. Clegg has never shared in any profits from the website business and has had to bear significant personal losses as a result of other lost work and business opportunities during the time of his association with the EL Group Parties.

64. In or around September 2011, after learning that the Lotuffs and EL Group Parties surreptitiously and in breach of their agreement were manufacturing Frank Clegg designed products without Mr. Clegg's involvement, Mr. Clegg confronted the Lotuffs. When confronted, Frederick Lotuff told Mr. Clegg that: "I guess we're both going to be making the same bags and selling them to the same customers." Further, Joseph Lotuff told Mr. Clegg that he would "bury you and knock off every bag you make," by putting "a Mexican spin on them," and that the EL Group Parties' goal was to use their substantial financial resources to "make it look like Frank Clegg never existed."

65. These statements by the EL Group Parties reveal the true nature of their intentions all along – to steal Mr. Clegg’s name, products, designs, expertise and, ultimately, his business, for their own enrichment.

66. Mr. Clegg was severely distressed as a result of these threats and became concerned for the safety and security of his family, employees and manufacturing facility.

67. Accordingly, Mr. Clegg immediately terminated any further dealings with the EL Group Parties, locked the EL Group Parties out of his manufacturing facility, and demanded that the EL Group Parties cease using his name, patterns and designs in connection with the sale of any leather products.

68. Since the termination of the Clegg Parties’ relationship with the EL Group Parties, the EL Group Parties have continued to sell leather goods and have systematically, routinely and continuously copied numerous Frank Clegg-designed leather products, including the Lawyer’s Briefcase, a drop-in leather zipper pocket designed by Mr. Clegg for CLEGG duffels, and the Tall Tote bag. This conduct continues today.

69. Since the separation, Joseph Lotuff has also falsely represented to consumers and potential consumers that he designed and/or contributed to the design of Mr. Clegg’s products. In addition, Joseph Lotuff has falsely represented in the industry that a backlog of LOTUFF & CLEGG orders was due to the improper actions of the Clegg Parties, as opposed to the EL Group Parties’ refusal to purchase leather and other raw materials in appropriate volumes, and their constant insistence that Mr. Clegg interrupt production to build small runs of items, rather than building up an inventory of products to sell as Mr. Clegg had repeatedly recommended.

70. Because the EL Group Parties have continued to produce products that are identical knock-offs of Mr. Clegg’s original designs, and to falsely market those products as original LOTUFF leather designs, the EL Group Parties have unfairly leveraged their agreement with Mr. Clegg and foreclosed the Clegg Parties from selling authentic Clegg-designed products in certain retail accounts, such as Barney’s New York, which will not sell identical products to those already in its catalog. The EL Group Parties’ production of knock-off designs and their

false statements indicating that they or members of their “team” are responsible for these designs and imputing the professional reputation of Frank Clegg as a designer and manufacturer have further subjected the Clegg Parties to substantial damages.

Mr. Clegg Learns of the EL Group’s Trademark Infringement

71. In or around November 2012, during the application process to register the marks FRANK CLEGG and F. CLEGG with the United States Patent and Trademark Office (“USPTO”), Mr. Clegg learned for the first time that “EL Group, LLC DBA Lotuff & Clegg” had federally registered the LOTUFF & CLEGG mark, exclusively for the benefit of the EL Group Parties, and contrary to the notion that any business relationship ever existed between Mr. Clegg and any of the EL Group Parties. The LOTUFF & CLEGG mark consists of the name of a particular living individual, namely Mr. Clegg, and was registered without Mr. Clegg’s consent, and indeed without any notification to Mr. Clegg whatsoever.

72. Upon information and belief, in or around May of 2011, the EL Group Parties registered the domain name www.frankclegg.com solely for the purpose of unfairly competing with Mr. Clegg, by preventing Mr. Clegg from using the domain name consisting of his own name, and the trademark under which Mr. Clegg had sold his handmade leather briefcases and bags for over three decades.

73. Mr. Clegg has made it clear to the EL Group Parties on numerous occasions since terminating his relationship with them that they cannot use or register any name or mark that contains Mr. Clegg’s surname or full name on or in connection with the marketing or sale of leather products, and that they have no legitimate right to the www.frankclegg.com domain name, and has repeatedly demanded that the EL Group Parties return the domain name to Mr. Clegg.

74. The websites www.lotuffclegg.com, www.lotuffanclegg.com and www.frankclegg.com are no longer active, but www.lotuffclegg.com and www.lotuffanclegg.com currently link to the EL Group Parties’ current website, www.lotuffleather.com, which contains numerous products that are identical knock-offs of Frank

Clegg-designed briefcases and bags, including the English Briefcase, Lock Briefcase, Zip-Top Briefcase, Tall Tote, and many others, and falsely suggests to consumers that such products are original LOTUFF designs.

75. Based on the foregoing facts alleged in this Counterclaim and Complaint, which arise out of the same series of transactions and occurrences as the claims alleged in the Complaint filed in this action by Plaintiffs Joseph Lotuff and EL Group, Defendants Frederick Lotuff and E. Alden Edmonds are subject to joinder as Defendants in this action pursuant to Rules 13(h), 19 and 20 of the Massachusetts Rules of Civil Procedure.

CAUSES OF ACTION

COUNT I **FEDERAL TRADEMARK INFRINGEMENT** **(15 U.S.C. § 1125; Lanham Act § 43)**

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

76. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

77. The EL Group Parties failed to gain Frank Clegg's consent to the federal registration of EL Group's LOTUFF & CLEGG mark, and Frank Clegg has not consented and does not consent to the EL Group Parties' use or registration of the marks FRANK CLEGG, F. CLEGG, FRANK CLEGG LEATHERWORKS or any other mark or domain name, including www.frankclegg.com, containing CLEGG for leather bags or related products or services.

78. Because the EL Group Parties are not using the LOTUFF & CLEGG mark in commerce, and have no intention to resume any such use, EL Group's mark has lost all capacity as a source indicator for EL Group's or any of the EL Group Parties' products.

79. Because Frank Clegg first used one or more of the FRANK CLEGG Marks on leather briefcases, bags and related products several decades before the EL Group filed USPTO Application Serial No. 77/938,595, or began using the LOTUFF & CLEGG mark, and such use

by Frank Clegg and Frank Clegg Leatherworks has been continuous, the Clegg Parties have priority of use.

80. By virtue of the Clegg Parties' long, continuous, extensive and exclusive use and marketing, production and sale of, and the consistent sale and purchase of leather briefcases, bags and related products under the FRANK CLEGG Marks, the FRANK CLEGG Marks have come to be recognized by the relevant public as identifying leather briefcases, bags and related products having their origin in or otherwise associated exclusively with Frank Clegg and Frank Clegg Leatherworks.

81. The LOTUFF & CLEGG mark for leather bags and related products is similar to Frank Clegg Leatherworks' FRANK CLEGG Marks. For example, both marks are comprised of the word CLEGG. Further, the LOTUFF & CLEGG mark evokes the same or a highly similar connotation as the FRANK CLEGG Marks, and both marks are used for identical goods, namely leather bags, briefcases and related products. Indeed, the use by the EL Group Parties of the CLEGG portion of the LOTUFF & CLEGG mark was and is intended to borrow from the reputation and recognition of the CLEGG name and the FRANK CLEGG Marks. The parties' respective products, as sold under their respective marks, are marketed to and purchased by the same class of consumers in the same and overlapping trade channels. Accordingly, it is likely that consumers will mistakenly believe that the LOTUFF & CLEGG mark for bags and other leather goods is connected to or associated with Frank Clegg, Frank Clegg Leatherworks or their FRANK CLEGG, F. CLEGG or FRANK CLEGG LEATHERWORKS leather products.

82. The continued registration and use of the LOTUFF & CLEGG mark for leather bags, briefcases and related goods, and the continued ownership of the frankclegg.com domain name, by the EL Group Parties would be inconsistent with Frank Clegg and Frank Clegg Leatherworks' rights in its FRANK CLEGG Marks and will continue to cause irreparable damage to the Clegg Parties, and the Clegg Parties have no adequate remedy at law for such acts.

83. The Clegg Parties have suffered monetary damages based on the EL Group Parties' false statements.

COUNT II
FALSE REPRESENTATIONS IN COMMERCE
(15 U.S.C. § 1125; Lanham Act § 43)

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

84. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

85. Joseph Lotuff, a member of EL Group, has made commercial statements in connection with the sale of leather goods, falsely representing to consumers that Mr. Lotuff was the designer and/or contributed to the design of the leather products currently sold by EL Group on its website www.lotuffleather.com, which products were actually designed exclusively by Frank Clegg.

86. These false statements are likely to deceive as to the affiliation, connection, association and origin of the EL Group Parties' LOTUFF leather products, and to falsely create the impression that these identical products are in some manner connected to or affiliated with the Clegg Parties' identical products, which were in fact designed by and have been sold by Frank Clegg to the same class of consumers for over thirty years.

87. These false statements have caused irreparable damage to the Clegg Parties, and unless enjoined will continue to cause irreparable damage to the Clegg Parties, and the Clegg Parties have no adequate remedy at law for such acts.

88. The Clegg Parties have suffered monetary damages based on the EL Group Parties' false statements.

COUNT III
BREACH OF CONTRACT

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

89. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

90. Joseph Lotuff, on behalf of the EL Group Parties, offered to enter into a contractual relationship with Mr. Clegg on the terms that Mr. Clegg would use his expertise designing and manufacturing leather products for sale on a website that was to be administered by the EL Group Parties, with the resulting profits from such website business to be shared 70% to Mr. Clegg, and 30% to the EL Group Parties. Mr. Clegg accepted, performed and relied upon this offer, by devoting the entire operation of his business to fulfilling the obligations of said agreement.

91. In addition to the sales of products on the parties' website, Mr. Clegg's agreement with the EL Group Parties was understood to include the sale of any products manufactured by the Clegg Parties and sold to retail accounts, including (without limitation), Barney's New York.

92. The EL Group Parties have never shared any profits with Mr. Clegg or any of the Clegg Parties, from the sales generated by the parties' website or from sales to retail accounts, and accordingly have breached the parties' agreement.

93. The Clegg Parties have suffered damages in the form of lost profits based on the EL Group Parties' breach.

COUNT IV
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E.
Alden Edmonds and EL Group, LLC)

94. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

95. Implicit in every agreement is a promise of good faith and fair dealing.

96. The EL Group Parties acted inconsistently with the justified expectations of the Clegg Parties under their agreement by, *inter alia*, refusing to abide by the agreed-upon split in profits and indeed never sharing any profits, representing that the EL Group Plaintiff's use of the Clegg Parties' time, labor, materials, confidential information, and goodwill, was in service of the agreement between the parties and not for the EL Group Parties' benefit, and other conduct evidencing their intent to never abide by the agreement.

97. In so doing, the EL Group Parties destroyed the right of the Clegg Parties to receive the fruits of the contract.

98. As a direct result of the EL Group Parties' breaches, the Clegg Parties have suffered damages.

COUNT V
INTENTIONAL AND/OR NEGLIGENT MISREPRESENTATION

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

99. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

100. The EL Group Parties made false representations of material fact regarding their intentions concerning their proposed business venture.

101. These representations were false when made, and the EL Group Parties intentionally and/or negligently made such false representations.

102. These representations had the purpose of inducing the Clegg Parties to expend time and labor, and to provide confidential information and materials to the EL Group Parties.

103. In justifiable reliance on these false representations, the Clegg Parties provided time, labor, materials, and confidential information to the EL Group Parties to their detriment.

104. The EL Group Parties failed to exercise reasonable care or competence in obtaining and communicating these representations.

105. As a direct and proximate result of the conduct of the EL Group Parties, the Clegg Parties have been damaged.

COUNT VI
FRAUDULENT INDUCEMENT

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

106. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

107. The EL Group Parties made false representations of material fact regarding their intentions concerning their proposed business venture.

108. The EL Group Parties knew that these representations were false.

109. The EL Group Parties acted with the purpose of inducing the Clegg Parties to expend time and labor, and to provide materials and confidential information to the EL Group Parties.

110. In justifiable reliance on these false representations and to their detriment, the Clegg Parties provided time, labor, materials, and confidential information to the EL Group Parties.

COUNT VII
VIOLATION OF M.G.L. ch. 93A, §§ 2, 11

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

111. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

112. The Clegg Parties and the EL Group Parties are engaged in a trade or commerce in Massachusetts within the meaning of Mass. Gen. Laws ch. 93A.

113. The Clegg Parties developed leather goods, the subject matter of the parties' agreement, in Massachusetts, and the EL Group Parties generated and distributed the Defendants' goods from Massachusetts.

114. The EL Group Parties have engaged in unfair and deceptive acts and practices, as described above, in violation of Section 2 of Mass. Gen. Laws ch. 93A. Those acts and practices include, without limitation, inducing Mr. Clegg to enter an agreement with the EL Group Parties without ever intending to perform said agreement, stating that if the EL Group Parties and Mr. Clegg ever stopped working together, the EL Group Parties would not want or use Mr. Clegg's designs any longer, filing a trademark incorporating Mr. Clegg's name without his consent, falsely representing to buyers that a "design team" was responsible for the Clegg Parties'

collection, secretly using the Clegg Parties' trade secrets and confidential information, and registering a domain name in Mr. Clegg's name after the agreement was terminated.

115. The Clegg Parties were deceived in and acted upon that deception in Massachusetts.

116. The losses incurred by the Clegg Parties from the EL Group Parties were sustained in Massachusetts.

117. The EL Group Parties' violations of Section 2 have been knowing and/or willful.

118. The EL Group Parties have caused damages in an amount to be determined at trial, which should be doubled or trebled by the Court.

COUNT VIII **UNJUST ENRICHMENT**

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

119. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

120. The EL Group Defendants have received a benefit by taking advantage of the Clegg Parties' time, labor, materials, confidential information, and goodwill, both during the term of their agreement and in their wrongful business thereafter.

121. The EL Group Defendants have knowledge of this benefit.

122. An acceptance or retention by the EL Group Defendants of these benefits under such circumstances would be inequitable without payment of their value.

COUNT IX **MISAPPROPRIATION OF TRADE SECRETS & CONFIDENTIAL INFORMATION**

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

123. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

124. The Clegg Parties own the trade secrets and confidential information described above.

125. The Clegg Parties have taken reasonable steps to protect its trade secrets and confidential information.

126. The EL Group Parties have misappropriated the Clegg Parties' trade secrets and confidential information as described above.

127. The EL Group Parties' misappropriation has caused the Clegg Parties damages in an amount to be determined at trial.

128. The EL Group Parties' misappropriation has caused the Clegg parties irreparable harm and unless enjoined will continue to cause irreparable damage to the Clegg Parties, and the Clegg Parties have no adequate remedy at law for such acts.

COUNT X
MISAPPROPRIATION OF TRADE SECRETS (M.G.L. ch. 93 §42)

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

129. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

130. M.G.L. ch. 93, § 42 provides, *inter alia*, that whoever steals, unlawfully takes, conceals, or copies, or by fraud or deception obtains with intent to convert to his own use, a trade secret, regardless of value shall be liable in tort for damages in an amount up to double those found.

131. The trade secrets described above are trade secrets of the Clegg Parties within the meaning of M.G.L. ch. 266, § 30 and M.G.L. ch. 93, § 42.

132. The Clegg Parties have taken reasonable steps to protect its trade secrets.

133. The EL Group Parties have misappropriated the Clegg Parties' trade secrets.

134. The EL Group Parties' misappropriation has caused the Clegg parties irreparable harm and unless enjoined will continue to cause irreparable damage to the Clegg Parties, and the Clegg Parties have no adequate remedy at law for such acts.

135. The EL Group Parties' misappropriation has caused the Clegg Parties damages in an amount to be determined at trial, which amount should be doubled by the Court.

COUNT XI
CIVIL CONSPIRACY

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E.
Alden Edmonds and EL Group, LLC)

136. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

137. As alleged in this Counterclaim and Complaint, numerous underlying tortious acts against the Clegg Parties have been committed.

138. The EL Group Parties agreed to work toward these unlawful results and take steps to do them, and that each separate EL Group Party knew that the other EL Group Parties' conduct constituted a breach of duty, each EL Group Party's mutual assistance was a substantial factor in causing the resulting torts, and each EL Group Party had unlawful intent in providing that assistance.

139. The EL Group Parties' conduct caused damages to the Clegg Parties.

COUNT XII
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E.
Alden Edmonds and EL Group, LLC)

140. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

141. The Clegg Parties had business relationships or prospective contracts with customers and prospective customers and other distributors.

142. The EL Group Parties knew that the Clegg Parties had expected to continue in a relationship with these various customers and prospects, including without limitation, Barney's New York.

143. Notwithstanding such knowledge, the EL Group Parties interfered through improper motive or means, with the Clegg Parties' relationships with these customers and prospects.

144. As a result of the EL Group Parties' conduct, the Clegg Parties have suffered damages.

COUNT XIII
COMMON LAW TRADEMARK INFRINGEMENT

(Frank Clegg and Frank Clegg Leatherworks, LLC vs. Joseph Lotuff, Frederick A. Lotuff, E. Alden Edmonds and EL Group, LLC)

145. The Clegg Parties repeat and thereby incorporate by reference all of the allegations set forth in the above paragraphs, inclusive, of this Counterclaim and Complaint.

146. The EL Group Parties failed to gain Frank Clegg's consent to the use by the EL Group of the LOTUFF & CLEGG mark, and Frank Clegg has not consented and does not consent to the EL Group Parties' use of the marks FRANK CLEGG, F. CLEGG, FRANK CLEGG LEATHERWORKS or any other mark or domain name, including www.frankclegg.com, containing CLEGG for leather bags or related products or services.

147. Because the EL Group Parties are not using the LOTUFF & CLEGG mark in commerce, and have no intention to resume any such use, EL Group's mark has lost all capacity as a source indicator for EL Group's or any of the EL Group Parties' products.

148. Because Frank Clegg first used one or more of the FRANK CLEGG Marks on leather briefcases, bags and related products several decades before the EL Group began using the LOTUFF & CLEGG mark, and such use by Frank Clegg and Frank Clegg Leatherworks has been continuous, the Clegg Parties have priority of use.

149. By virtue of the Clegg Parties' long, continuous, extensive and exclusive use and marketing, production and sale of, and the consistent sale and purchase of leather briefcases,

bags and related products under the FRANK CLEGG Marks, the FRANK CLEGG Marks have come to be recognized by the relevant public as identifying leather briefcases, bags and related products having their origin in or otherwise associated exclusively with Frank Clegg and Frank Clegg Leatherworks.

150. The LOTUFF & CLEGG mark for leather bags and related products is similar to Frank Clegg Leatherworks' FRANK CLEGG Marks. For example, both marks are comprised of the word CLEGG. Further, the LOTUFF & CLEGG mark evokes the same or a highly similar connotation as the FRANK CLEGG Marks, and both marks are used for identical goods, namely leather bags, briefcases and related products. Indeed, the use by the EL Group Parties of the CLEGG portion of the LOTUFF & CLEGG mark was and is intended to borrow from the reputation and recognition of the CLEGG name and the FRANK CLEGG Marks. The parties' respective products, as sold under their respective marks, are marketed to and purchased by the same class of consumers in the same and overlapping trade channels. Accordingly, it is likely that consumers will mistakenly believe that the LOTUFF & CLEGG mark for bags and other leather goods is connected to or associated with Frank Clegg, Frank Clegg Leatherworks or their FRANK CLEGG, F. CLEGG or FRANK CLEGG LEATHERWORKS leather products.

151. The continued use of the LOTUFF & CLEGG mark for leather bags, briefcases and related goods, and the continued ownership of the frankclegg.com domain name, by the EL Group Parties would be inconsistent with Frank Clegg and Frank Clegg Leatherworks' rights in its FRANK CLEGG Marks and will continue to cause irreparable damage to the Clegg Parties, and the Clegg Parties have no adequate remedy at law for such acts.

152. As a result of the EL Group Parties' conduct, the Clegg Parties have suffered damages.

PRAYER FOR RELIEF

WHEREFORE, the Clegg Parties pray for judgment in their favor and against the EL Group Parties as follows:

1. That Joseph Lotuf and EL Group, LLC take nothing by reason of their Complaint, that the Complaint be dismissed with prejudice, and that judgment be entered in favor of the Clegg Parties the Complaint;

2. For a preliminary and/or permanent injunction against the EL Group Parties that enjoins and restrains the EL Group Parties, their officers, directors, employees, agents, attorneys, and those in privity and/or active concert with them from:

- a. under Counts I and XIII, infringing the Clegg Parties' FRANK CLEGG Marks and from using the names CLEGG or FRANK CLEGG and LOTUFF & CLEGG and the domain names lotuffandclegg.com and frankclegg.com, and any other names or marks that are confusingly similar to any of the FRANK CLEGG Marks;
- b. Under Count I, maintaining U.S. Registration No. 3872561 for the LOTUFF & CLEGG mark;
- c. Under Count I, maintaining ownership of the www.frankclegg.com and lotuffandclegg.com domain names;
- d. under Count II, making false representations in commerce;
- e. under Count VII, engaging in unfair and competitive practices against the Clegg parties;
- f. under Counts IX and X from using the Clegg Parties' trade secrets and confidential information; and
- g. under Count XII from interfering with the Clegg Parties' business.

3. For a declaration by this Court that EL Group, LLC's U.S. Registration No. 3872561 for the LOTUFF & CLEGG mark shall be cancelled by the USPTO with an order to the USPTO to cancel said registration;

4. For a declaration by this Court that EL Group, LLC's registration of the lotuffandclegg.com domain name shall be cancelled and the frankclegg.com domain name shall be transferred to Frank Clegg, with an order to the registrars of such domain names to cancel the

lotuffandclegg.com domain name and to transfer the frankclegg.com domain name to Frank Clegg;

5. That the Clegg Parties be awarded the damages prayed for herein;
6. That the Clegg Parties be awarded trebled damages, attorneys' fees and costs pursuant to Count VII of this Counterclaim and Complaint;
7. That the Clegg Parties be awarded double damages pursuant to Count X of this Counterclaim and Complaint;
8. That the Clegg Parties be awarded enhanced damages pursuant to Counts 1 and II of this Counterclaim and Complaint pursuant to 15. U.S.C. §1117;
9. That the Clegg Parties be awarded its costs and attorneys' fees incurred in defense of this action, as provided by law; and
10. For such other and further relief as the court may deem just and proper.

FRANK CLEGG, FRANK CLEGG
LEATHERWORKS, LLC, ANDREW CLEGG and
IAN CLEGG

By their attorneys,



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Dated: June 27, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2014 a true copy of the above document was served upon the attorneys of record by email and mail.

A handwritten signature in black ink, appearing to read 'B. St. Amant', is written over a horizontal line.

Brendan T. St. Amant